BOARD of SUPERVISORS

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NOTICE OF PUBLIC HEARING

FINANCE AND AUDITS COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN to the general public that the Finance and Audits Committee will hold a public hearing on **Wednesday, May 7, 2003 at 12:30 p.m.,** in Room 263 at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, California to consider the following:

File: 030250 Ordinance amending the SF Lobbyist Ordinance, Article II, Chapter 1, Sections 2.110 and 2.145 of the SF Campaign and Governmental Conduct Code, to increase registration fees from $300.00 to $500.00; client fees from $50.00 to $75.00; and late filing fines from $25.00 per day to $50.00 per day.

File: 030521 Resolution making environmental findings and re-authorizing a one dollar fee to be paid at time of vehicle registration, renewal, or supplemental application for every vehicle registered to an address within the City and County of San Francisco, except exempt vehicles, to be used exclusively to fund law enforcement programs related to fingerprint identification of persons committing crimes while operating motor vehicles; ratifying said fees paid between January 1, 2003, and the effective date of this resolution; and authorizing the Police Department to issue a fiscal year-end report to the California State Controller on the collection and use of these fees. This fee shall be in effect from January 1, 2003, until January 1, 2006.

Data in support of the proposed fee increases is available in the above-mentioned files of the Clerk of the Board of Supervisors ten days prior to the hearing.

For more information regarding the above, telephone (415) 554-5184 or write to Clerk's Office, Board of Supervisors, Room 244, City Hall, San Francisco, CA 94102.

Persons who are unable to attend the hearing may submit written comments regarding this matter prior to the beginning of the hearing. These comments will become part of the official public record.

Gloria L. Young, Clerk of the Board

POSTED: April 24, 2003

City and County of San Francis
Meeting Minutes
Finance and Audits Committe

Members: Aaron Peskin, Gerardo Sandoval and Jake McGoldrick

Clerk: Linda Laws

Wednesday, May 07, 2003 | **12:30 PM** | **City Hall, Room 263**

Regular Meeting

Members Present: Aaron Peskin, Gerardo Sandoval, Jake McGoldrick.

MEETING CONVENED

The meeting convened at 12:38 p.m.

REGULAR AGENDA

030687 **[Municipal minimum wage]**

Supervisor Gonzalez

Hearing for the purpose of allowing the University of California at Berkeley to present its findings on the impacts of creating a municipal minimum wage as requested by the San Francisco Board of Supervisors in File No. 021107, Resolution No. 453-02.

4/22/03, RECEIVED AND ASSIGNED to Finance and Audits Committee. Sponsor requests this item be scheduled for consideration at the May 7, 2003 meeting.

Heard in Committee. Speakers: Supervisor Gonzalez; Dr. Michael Wright, UC Berkeley; Lou Calabro; Gwyneth Borden, SF Chamber of Commerce; Nicole Derse, SF Youth Commission; Ian Lewis, Local 2; Nato Green; Shelley Rotor, St. Boniface; Alexis Gonzalez, St. Anthony's Foundation; Malik Looper, Goodwill Industries; Henry Lopez, ACORN; Barry Hermanson; Chrissy Kiefer; Mark Gruberg.

FILED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030536 **[Amendment to Real Property Lease]**

Resolution authorizing a second amendment to an existing lease of office space at 1212 Market Street, also known as 11 Grove Street, for the Department of the Environment. (Real Estate Department)

(Public Benefit Recipient; District 6.)

4/2/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Speakers: None.

RECOMMENDED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030250 **[Increase Lobbyist Fees and Late Filing Fines]**

Supervisor Peskin

Ordinance amending the San Francisco Lobbyist Ordinance, Article II, Chapter I, sections 2.110 and 2.145 of the San Francisco Campaign and Governmental Conduct Code, to increase registration fees from $300.00 to $500.00; client fees from $50.00 to $75.00; and late filing fines from $25.00 per day to $50.00 per day. (Ethics Commission)

(No Public Benefit Recipient.)

2/19/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

3/11/03, REFERRED TO DEPARTMENT. Transmitted to Planning Department for environmental review.

3/17/03, RESPONSE RECEIVED. Non-physical exemption from CEQA Sections 15060(c)(3) and 15378.

Speakers: None.

RECOMMENDED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030521 **[Making Environmental Findings and Re-authorizing Vehicle Registration Fee]**

Mayor

Resolution making environmental findings and re-authorizing a one dollar ($1) fee to be paid at time of vehicle registration, renewal, or supplemental application for every vehicle registered to an address within the City and County of San Francisco, except exempt vehicles, to be used exclusively to fund law enforcement programs related to fingerprint identification of persons committing crimes while operating motor vehicles; ratifying said fees paid between January 1, 2003, and the effective date of this resolution; and authorizing the Police Department to issue a fiscal year end report to the California State Controller on the collection and use of these fees. (Mayor)

4/1/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/8/03, REFERRED TO DEPARTMENT. Referred to Planning Department/Environment Review Officer for review and comment.

4/16/03, RESPONSE RECEIVED. Non-physical exemption from CEQA Sections 15060(c)(3) and 15378.

Speakers: None.

RECOMMENDED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030222 **[Performance measures and timeline for pending work in the Assessor's Office]**

Supervisor Dufty

Hearing to analyze backlog of work of the Assessor's Office; (2) financial impacts of said backlog; and (3) analyze and establish performance timelines and performance measures for that office.

2/11/03, RECEIVED AND ASSIGNED to Finance Committee. Sponsor requests this item be scheduled for consideration at the 2/19/03 Finance meeting.

2/13/03, TRANSFERRED to Finance and Audits Committee. New committee structure 2/17/03.

2/19/03, CONTINUED TO CALL OF THE CHAIR. Heard in Committee. Speakers: Supervisor Dufty; Mabel Teng, Assessor-Recorder; Edward Harrington, Controller; Harvey Rose, Budget Analyst, Theresa Contreau, Appraiser, Assessor-Recorder's Office, Local 21 representative; John Farrell, Assessor-Recorder's Office; Gus Kenup, Assessor-Recorder's Office; Janet Weinder, Management Assistant, Assessor-Recorder's Office; Tim Amher, Assessor-Recorder's Office; Alex Terrell, Appraiser, Assessor-Recorder's Office.

Speakers: None.

Continued to 5/21/03.

CONTINUED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030400 **[Approval of Lease Amendment for Waterfront Restaurant]**

Resolution approving Fourth Lease Amendment to Port Lease No. L-11859 between the Port Commission and Bundox Restaurant, Inc., a California corporation ("Tenant") for the lease of real property commonly known as the Waterfront Restaurant. (Port)

(Public Benefit Recipient.)

3/12/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/30/03, CONTINUED. Heard in Committee. Speakers: Harvey Rose, Budget Analyst; Ted Lakey, Deputy City Attorney; Kenneth Winters, Port; Mary Murphy, attorney for Bundox Restaurant.
Continued to 5/7/03.

Speakers: None.
Continued to 5/21/03.

CONTINUED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030619 **[Release of reserved funds, Airfield Development Bureau]**

Supervisor Dufty

Motion for hearing regarding release of $3.7 million held in reserve of the Airfield Development Bureau budget allocation for Fiscal Year 2002-03.

4/15/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/30/03, CONTINUED. Heard in Committee. Speakers: Male Speaker; Ted Lakey, Deputy City Attorney; Ivar Satero, Airport Commission; Cathy Widener, Airport Commission; Male Speaker, Janitors Union.
Continued to 5/7/03.

Heard in Committee. Speaker: Harvey Rose, Budget Analyst.
Continued to 5/21/03.

CONTINUED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

ADJOURNMENT

The meeting adjouned at 2:21 p.m.

proposing increased fees to more fully recover the costs of the Ethics Commission in providing lobbyist-related services. According to Ms. Vida, the late filing fines would be increased to make them consistent with the Campaign Consultant Ordinance (see Comment No. 2). Ms. Vida notes that the lobbyist-related fees have not been increased since 1997.

The proposed fee changes are:

- increase lobbyist registration fees by $200 or 66.7 percent, from $300.00 to $500.00;
- increase fees for clients of lobbyists by $25 or 50.0 percent, from $50.00 to $75.00; and
- increase late filing fines charged to lobbyists by $25 or 100 percent, from $25.00 per day to $50.00 per day.

According to Ms. Vida, the lobbyist registration fee revenues are used to (a) cover costs of administering the program, including reproduction and mailing costs to send notification and compliance letters to lobbyists, (b) cover reproduction costs of manuals and forms, production and distribution costs of quarterly reports, (c) cover staff time spent to receive and audit lobbyist registration, re-registration and quarterly filings, (d) cover staff time spent to prepare quarterly reports, provide oral and written advice, (e) conduct quarterly workshops, and (f) perform miscellaneous bookkeeping. The client fee revenues are used to cover the above costs as they relate to lobbyists' clients. The lobbyist fees, client fees, and late filing fines all accrue to the City's General Fund.

According to Ms. Vida, the fees are payable to the City at the time the lobbyists register as lobbyists and when the lobbyists register their clients, a process that continues throughout the year. Once lobbyists register, they must re-register and pay re-registration fees for themselves and their clients no later than January 15 of each year.

Attachment I, provided by Ms. Vida, contains a table showing the existing fees, the proposed fees, the current annual revenues realized from the existing fees, and the proposed annual increase in fee revenues if the new fees are adopted. Attachment I also displays the Ethics

Commission's current annual costs to perform the services and the projected percentage of costs to be recovered if the proposed fees are approved by the Board of Supervisors. According to this table, the proposed fee increases will result in a 35 percent increase of cost recovery to the Ethics Commission: an average of 94.5 projected cost recovery with proposed fee increases less an average of 59.5 percent cost recovery realized in FY 01-02. Attachment II, also provided by Ms. Vida, is a budget provided by the Ethics Commission containing the annual costs of registering lobbyists, which is $24,036 and the annual cost of registering their clients, which is $11,902. Therefore, the total cost of the Lobbyist Program, as reported by Ms. Vida, is $35,938, or $534.16 per lobbyist and $79.35 per client.

Comments:

1. As reported in Attachment I, the revenues generated in FY 2001-2002 under the current fee schedule recover 59.5 percent of the Department's costs to administer the program. As calculated in Attachment II, provided by Ms. Vida, and explained in Attachment III, a memoranda from Ms. Vida, the Ethics Commission determined that the current actual costs of the Ethics Commission are $534.16 per lobbyist, based on 45 lobbyists, and $79.35 per client, based on 150 clients, to administer the Lobbyist Ordinance. Accordingly, the proposed ordinance would increase these fees to help cover the costs of administration. As explained in Attachment III, because the proposed fee increases will result in significant percentage increases (66.7 percent increase for lobbyist registration fees, and 50 percent increase for the registration fees for clients of lobbyists), the Ethics Commission did not want to increase fees at higher levels, even though the proposed increase of fees would only result in the Ethics Commission's recovery of an average of 94.5 percent of costs as reported in Attachment I, rather than 100 percent recovery.

2. As also explained in Attachment III, Ms. Vida states that the increase for the late filing fine is intended to make such fees consistent with the Campaign Consulting Ordinance, which imposes late filing fines of $50 per day and not the current fee of $25.00 per day.

3. As reported in Attachment I, the proposed fees and late fines would result in total estimated annual revenue of $35,750, according to Ms. Vida. Such revenues will be included in the Ethics Commission's FY 2003-2004 proposed budget, according to Ms. Vida. According to Ms. Dawn Kamalanathan of the Mayor's Budget staff, the Mayor's recommended FY 2003-2004 budget will include Ethics Commission revenues based on the Ethics Commission's proposed fee increases of $37,750 for FY 2003-2004, which includes late fine revenues.

Recommendation: Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

Ethics Commission: Increase in Lobbyist-related Fees

File Number 03-0250

Fee name	Existing Fee	Proposed Fee	Increase in fee	Proposed percent Increase in fee	Revenue Realized in FY01-02	Projected annual Revenue from proposed fee level	Annual Increase in Revenue	Total costs for providing service	FY 01-02 of costs recovered		Projected % of costs recovered from proposed fee level	
Lobbyist Registration fees	$ 300.00	$500.00	$200.00	67%	$13,500.00	$22,500.00	$ 9,000.00	$24,036.10	56%	(Avg. of 59.5% total costs recovered)	94%	(Avg. of 94.5% total costs recovered)
Client fees	$ 50.00	$ 75.00	$ 25.00	50%	$ 7,500.00	$11,250.00	$ 3,750.00	$11,902.25	63%		95%	
Late filing fees	$ 25.00	$ 50.00	$ 25.00	100%	$ 1,000.00	$ 2,000.00	$ 1,000.00	n/a	n/a		n/a	
Totals					$22,000.00	$35,750.00	$ 13,750.00	$35,938.35				

source: Ethics Commission

Attachment 1
Annual Costs of Lobbyist Program

Employee	Task	Work Hours		Salary Cost		Reproduction/Mailing Costs	
		Lobbyist	Client	Lobbyist	Client	Lobbyist	Client
Program Administrator	Advice	160	80				
	Processing new registrations	9	3			$14.70	
	Addition/Termination of new clients	0	50				
	Notification of quarterly filing	4	0			$174.60	
	Facial audit of reports	40	20				
	Quarterly report production/distribution	150	50			$1,026.50	$256.00
	Press release	8	0				
	Assessment of late fines	12	4			$42.80	
	Quarterly workshop	14	6			$60.00	$20.00
	Bookkeeping	80	40				
	Manual/Forms reproduction/maintenance	9	3			$600.00	$300.00
	Total:	486	256	$18,832.50	$9,920.00		
Executive Director	Review of quarterly report/press release	5	3				
	Review of program	1	1				
	Total:	6	4	$375.00	$250.00		
Deputy Director	Review of quarterly report/press release	3	1				
	Advice	15	10				
	Total:	18	11	$922.50	$563.75		
Other Staff	Accounting/bank deposits	16	8				
	Intake/copying	32	8				
	Total:	48	16	$1,620.00	$540.00		
Budget Analyst	Prepare budget	7	1	$367.50	$52.50		
TOTALS:				$22,117.50	$11,326.25	$1,918.60	$576.00

TOTAL COST TO LOBBYISTS:	$24,036.10
TOTAL COST TO CLIENTS:	$11,902.25
GRAND TOTAL COST OF PROGRAM:	$35,938.35
GRAND TOTAL COST PER LOBBYIST: $24,036.10/45 (# of lobbyists)	$534.16
TOTAL COST PER CLIENT: $11,902.25/150 (# of clients)	$79.35

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source:
Ethics Commission

ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

DATE: March 20, 2003

TO: Jema Turk, Budget Analyst

FROM: Ginny Vida, Executive Director
By: Shannon Hardin

RE: Narrative Re: Proposed Amendments to the Lobbyist Ordinance

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You had asked for further clarification of the proposed amendments to the City's Lobbyist Ordinance, San Francisco Campaign and Governmental Conduct Code sections 2.100 and 2.145, which were recommended by a unanimous vote of the members of the Ethics Commission at its meeting on February 10, 2003.

Section 2.100

The Lobbyist Ordinance requires that individuals and entities that qualify as lobbyists must register and file reports with the Ethics Commission. Currently, lobbyists are required to pay an initial registration and annual re-registration fee of $300. Lobbyists are also required to pay an initial registration and re-registration fee of $50 per client. These amounts have been in effect since 1997, without adjustment to reflect the costs of living.

The Commission has determined that it costs approximately $534 per lobbyist and $79 per client to administer and enforce the Ordinance. The proposed amendments will enable the Commission to recoup most of the costs incurred in administering the Ordinance, including reproduction and mailing costs and staff time, by increasing the registration fee to $500 per lobbyist and the per client fee to $75. The proposed fees are calculated so as to meet, but not exceed, the reasonable costs of administering the Lobbyist Ordinance. Because the proposed increases are significant (67% for lobbyist registration fees and 50% for client registration fees), the Commission was reluctant to raise the fees above $500 per lobbyist and $75 per client. In addition, the Commission agreed to use round numbers ($500 instead of $534 per lobbyist and $75 instead of $79 per client) for ease of administration.

Section 2.145

Currently, lobbyists are subject to a $25 per day late fine for filing an original statement or report after the deadline. In considering the changes to the Ordinance, the Commission approved an amendment to increase the fine to $50 per day to achieve

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consistency with the Campaign Consultant Ordinance, which provides for a $50 per day fine for late filers. The Lobbyist Ordinance and the Campaign Consultant Ordinance were enacted by different bodies at different times: the Lobbyist Ordinance was enacted by the Board of Supervisors and the Mayor, and the Campaign Consultant Ordinance was approved by the voters. Therefore, the late fines for the Lobbyist Ordinance and Campaign Consultant Ordinance have been different to date, but would be aligned by the proposed amendments. The Commission believes that the need for public disclosure of the identity and extent of lobbyists' efforts to influence local legislative and administrative action is as important as the need for public disclosure of campaign consultant activities. Thus, lobbyists who fail to file disclosure reports in a timely manner should be subject to the same penalties as campaign consultants who fail to file in a timely manner.

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Item 4– File 03-0521

Department: Police Department

Item: Resolution making environmental findings and re-authorizing a one dollar ($1.00) Fingerprint Identification Fee, to be paid at the time of vehicle registration, renewal, or supplemental application for every vehicle registered to an address within the City and County of San Francisco, except vehicles which are deemed exempt (see below). The proceeds realized from the subject $1.00 Fingerprint Identification Fee must be expended exclusively for law enforcement programs related to fingerprint identification of persons committing crimes while operating motor vehicles. The proposed ordinance also ratifies the Fingerprint Identification Fee for fee revenues allocated by the State to San Francisco, paid between January 1, 2003, and the effective date of this resolution; and requests and authorizes the Police Department to consult with the City's Controller and to annually issue a fiscal yearend report to the State Controller on the expenditures made from such revenue allocations (see Comment No. 1).

Description: Since January 1, 1998, Section 9250.19 of the California Vehicle Code authorizes county boards of supervisors, by resolution, to impose a $1.00 Fingerprint Identification Fee to be paid by individuals who have vehicles registered to an address in the county, to the State Department of Motor Vehicles (DMV) at the time of vehicle registration, renewal or supplemental applications for apportioned registration[1] on every vehicle registered to an address within the county, except those vehicles expressly exempted from payment of the $1.00 Fingerprint Identification Fee, such as government-owned vehicles. Section 9250.10 requires that the revenues allocated by the State's Controller to the City from the $1.00 Fingerprint Identification Fee are to be "expended exclusively to fund programs that enhance the capacity of local law enforcement to provide automated mobile and fixed location fingerprint identification of individuals."

[1] Apportioned registration is the registration of commercial vehicles in California, which are used in part to travel to jurisdictions outside of the State. Fees are collected in California and remitted to states on the basis of miles traveled within each of those states.

In August of 1998, the Board of Supervisors approved a resolution (File No. 98-59) authorizing the City to impose the $1.00 Fingerprint Identification Fee on vehicles registered to an address within the county. A resolution (File No. 98-59), previously approved by the Board of Supervisors, included a sunset date of January 1, 2003, which was consistent with the provision established under Section 9250.19 of the California Vehicle Code in August of 1998. According to Mr. Tom Lakritz of the City Attorney's Office, on September 27, 2002, Section 9250.19 of the California Vehicle Code was amended to allow county boards of supervisors to impose this $1.00 Fingerprint Identification Fee through January 1, 2006, removing the previous sunset date of January 1, 2003 described above.

The proposed resolution (a) re-authorizes the Board of Supervisors to impose this $1.00 Fingerprint Identification Fee, effective January 1, 2003, consistent with State law, and (b) retroactively ratifies the Fingerprint Identification Fees which have or will be collected by the Department of Motor Vehicles (DMV) between January 1, 2003 and the effective date of the subject resolution. According to Mr. Lakrtiz, the DMV collects the $1.00 Fingerprint Identification Fee at the time of vehicle registration, and, after deducting its administrative costs, provides the revenues to the State Controller, who then disburses the revenues to counties based on quarterly allocations.

The proposed resolution also requests and authorizes the Police Department to consult with the City's Controller and requests and authorizes the Police Department to annually issue a fiscal yearend report to the State Controller on the expenditures made from the State's allocation of the Fingerprint Identification Fee revenues, in accordance with Section 9250.19 of the California Vehicle Code.

The proposed resolution also states that the Planning Department has determined that re-authorizing the $1.00 Fingerprint Identification Fee is in compliance with the California Environmental Quality Act (CEQA).

Comments:

1. The proposed resolution states that the "Police Department is requested and authorized to consult with the Controller" and that the Police Department is requested and authorized to annually issue a yearend report to the State Controller on the collection and use of the Fingerprint Identification Fees, in accordance with Section 9250.19 of the California Vehicle Code. However, such annual reports are not requested to be submitted to the Board of Supervisors.

2. As shown in the Attachment to this report, provided by Captain John Goldberg of the Police Department, since August of 1998, the Police Department has received a quarterly allocation from the State Controller based on the State DMV collection of the $1.00 Fingerprint Identification Fee. As reported by Captain Goldberg in the Attachment, the State has allocated San Francisco a total of $1,005,988 from the Fingerprint Identification Fee revenue between FY 1999-2000 through FY 2001-2002. The Attachment also explains the basis of the State revenues allocated to San Francisco. Captain Goldberg states that the allocation from the State Controller of the $1.00 Fingerprint Identification Fee accrues to the Police Department's Automated Fingerprint Identification System (AFIS) Special Fund. According to Ms. Pamela Levin of the Controller's Office, as of April 21, 2003, the unappropriated AFIS fund balance is $918,285. Captain Goldberg states that the monies that accrue to this Special Fund are subject to Board of Supervisors appropriation approval in the annual budget.

3. According to Captain Goldberg, the Department of Motor Vehicles, on behalf of the City, has continued to charge this Fingerprint Identification Fee since January 2, 2003, subsequent to the sunset date of January 1, 2003 as was previously approved by the Board of Supervisors. Captain Goldberg states that due to an administrative oversight, the Police Department is now requesting a reauthorization for the $1.00 Fingerprint Identification Fee, over four months subsequent to the previously established sunset date of January 1, 2003. Mr. Lakritz advises that the proposed resolution would retroactively ratify the $1.00 Fingerprint Identification Fees between

January 1, 2003 and the effective date of the subject resolution.

Recommendations:

1. In accordance with Comment No. 1, amend the proposed resolution to require that the Police Department submit to the Board of Supervisors copies of the fiscal yearend reports containing Fingerprint Identification Fee revenue and expenditure data, which the Police Department submits to the State.

2. Approve the proposed resolution, as amended.

Automated Fingerprint Identification System (AFIS)

	FY 1998-1999	FY 1999-2000	FY 2000-2001	FY 2001-2002
Revenues:				
Fingerprint Identification Fee ($1)*		$ 366,101	$ 358,841	$ 281,046
Other sources of revenue for the Automated Fingerprint Identification System (AFIS) Special Fund (Traffic Fines, City Fingerprinting Fee, Public Safety and Beginning Fund Balance	$ 1,651,410	$ 3,839,445	$ 5,326,630	$ 1,813,936
Total Revenues:	$ 1,651,410	$ 4,205,546	$ 5,685,471	$ 2,094,982
% of Fingerprint Identification Fee	N/A	28%	21%	17%
Expenditures	$ 1,031,198	$ 817,156	$ 5,218,928	$ 1,937,090

* The basis of the $1 Fingerprint Identification fee is $1 to be paid at the time of vehicle registration or renewal on every vehicle registered to an address within the county, except for those expressly exempted. The fees, after deduction of the administrative costs incurred by the Department of Motor Vehicles in carrying out this section, shall be paid quarterly to the Controller. Money allocated shall be expended exclusively to fund programs that enhance the capacity of local law enforcement to provide automated mobile and fixed location fingerprint identification of individuals who may be involved in crimes committed while operating a motor vehicle. California Vehicle Code 9250.19 (a)(1)

Item 5 - File 03-0222

Note: This hearing was continued by the Finance and Audits Committee at its meeting of February 19, 2003 and continued to the Call of the Chair. On March 5, 2003, the Finance and Audits Committee recommended File 03-0224, a Supplemental Appropriation Ordinance appropriating $349,671 in surplus recording fees and reappropriating $194,128 in equipment, materials and supplies and professional services for a total of $543,799 to cover shortfalls in salaries and services of other departments and for temporary salaries and fringe benefits to address the backlog of deed processing, appraisals, permits and appeals in the Assessor-Recorder's Office. The Finance and Audits Committee then requested that this companion hearing (File 03-0222) be calendared so that the Finance and Audits Committee can consider the Assessor-Recorder's Performance Measures for FY 2002-2003.

Department: Assessor-Recorder

Item: Hearing to analyze backlog of work of the Assessor's Office; (2) financial impacts of said backlog; and (3) analyze and establish performance timelines and performance measures for that office.

Description:

1. Attachment I, provided by the Assessor-Recorder is a listing of performance measures developed for calendar years 2002 and 2003. The Attachment also provides performance goals for calendar years 2002 and 2003.

2. Attachment II, a memorandum from the Assessor-Recorder, provides an update on the status of the Assessor-Recorder's processing backlog.

Comments:

1. The performance measures and performance goals shown in Attachment I were developed by the Assessor-Recorder working with the Controller's Special Projects Office. The Budget Analyst had reviewed an earlier version of the performance measures and suggested additional information on real property data which were incorporated into Attachment I.

2. Previously, the Assessor-Recorder provided historical actual performance for calendar years 2000 and 2001 to the Budget Analyst. However, that data was found to be unreliable according to Mr. Rich Hillis of the Assessor-Recorder's Office. The Budget Analyst notes that actual performance data is not yet available for calendar year

2002, which will be available when the Assessor-Recorder closes the assessment roll on June 30, 2003, and the Assessor-Recorder is unable to provide actual year-to-date performance data for calendar year 2003.

3. In Attachment II, a memorandum from the Assessor-Recorder concerning the current processing backlog, the Assessor-Recorder reports the following concerning backlogs:

- <u>Deed Backlog in Transaction Unit</u> – The backlog in the Transaction Unit has been reduced from 13,000 transactions as of January 8, 2003 to 10,500 transactions as of April 15, 2003. The value of the remaining 10,500 transactions is estimated at approximately $500 million in assessed value.

- <u>Deed Backlog in Real Property</u> – The backlog in the Real Property Division has been reduced from 3,900 assessable change of ownership transactions as of January 8, 2003 to 2,300 as of April 15, 2003. The value of the remaining 2,300 transactions is estimated to be $1 billion in assessed value.

- <u>Permit Backlog</u> – The new construction permit backlog in the office has <u>increased</u> from 7,300 as of January 8, 2003 to 8,100 as of April 15, 2003. The four new appraiser trainees hired in April of 2003 will be focusing primarily on outstanding new construction permits. The value of these 8,100 transactions is estimated to be $2.5 billion.

4. After reviewing the Assessor-Recorder's proposed performance measures, the Budget Analyst concludes that implementation of adequate management monitoring of such performance measures will represent an improvement over past practices in the Assessor-Recorder's Office. However, as noted above, historical performance data has been found to be unreliable by the current Assessor-Recorder. Therefore, since future performance cannot be compared to past performance using the proposed measures shown in Attachment I, it will not be possible to ascertain the level of improved performance compared to prior years before calendar year 2002.

ASSESSOR-RECORDER'S OFFICE
Summary of Performance Measures

(Bolded data indicates goals. Other figures are actuals)

MEASURE	2002	2003 (through 4/30/03)
REAL PROPERTY Data: Deeds Received Assessable Deeds Received Permits Received Assessable Permits Received	 38,219 not avail. 24,034 not avail.	 12,810 not avail. 7,864 not avail.
1. Percentage of change of ownership transactions valued by June 30.	**85.0%**	**85.0%**
2. Percentage of new construction reassessments completed by June 30	**75.0%**	**85.0%**
3. Average number of change of ownership appraisals completed per appraiser.	**500**	**550**
4. Average number of new construction appraisals completed per appraiser (with added value).	**150**	**200**
TRANSACTION UNIT:		
Percentage of change of ownership documents	**95.0%**	**97.0%**

Source: Assessor-Recorder's Office

processed by March 1.		
1. Sales of single family dwellings processed within 30-days of sale.	**75.0%**	**85.0%**
2. Average number of deeds processed daily.	**120.0**	**150.0**
PERSONAL PROPERTY Data: Business Prop Stmts Received	10,365	
1. Percentage of mandatory audits completed by June 30	**44%**	**51%**
RECORDER Data Documents Recorded	246,790	
1. Percentage of Title Co. and walk-in documents recorded within 24 hours of receipt	100%	**100%**
2. Percentage of mailed documents recorded within 7 businesses days of receipt.	Not avail.	25%
3. Percentage of documents processed and returned to customer within 30 business days.	Not avail.	**90%**

Source: Assessor-Recorder's Office

City and County of San Francisco
Office of the Assessor-Recorder

MABEL S. TENG
Assessor-Recorder

MEMORANDUM

April 30, 2003

TO: SUPERVISOR AARON PESKIN
SUPERVISOR GERARDO SANDOVAL
SUPERVISOR JAKE MCGOLDRICK
Board of Supervisors' Finance Committee

FROM: MABEL TENG
Assessor

RE: Assessor-Recorder's Office Performance Measures

Per your request at our hearing last month, attached are the proposed performance measures for the Assessor-Recorder's Office.

Staff from the Assessor's Office and the Controller's Office worked together to develop these measures. The process included reviewing existing performance measures and surveying similar counties in California. The proposed measures will be utilized by the office's management staff as a tool to gauge the performance of the office's various divisions. We are also developing detailed reports for each employee in the office, notably the appraisers and transaction unit staff, to set goals and measure productivity to ensure that we are timely processing new transaction and working to reduce the valuation backlogs.

With regard to the backlogs, you should note that these are not included as ongoing performance measures. The proposed measures are designed to determine ongoing office productivity and to keep current on transaction processing. However, the Assessor's Office is also focused on reducing existing backlogs. I am prepared to report on these backlogs separately to the Board of Supervisors, as you deem necessary. The following information will give you an indication of our progress in reducing the backlogs since January:

- Deed Backlog in Transaction Unit – The backlog in the Transaction Unit has been reduced from 13,000 transactions to 10,500 transactions. The value of the remaining transactions is estimated at approximately $500 million in assessed value.

- Deed Backlog in Real Property – The backlog in the Real Property division has been decreased to 2,300 assessable change of ownership transactions compared to 3,900 in

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January. The value of the remaining transactions is estimated to be $1 billion in assessed value.

- Permit Backlog – The new construction permit backlog in the office has increased from 7,300 in January to 8,100 as of April 15th. The four new appraiser trainees hired in April will be focusing primarily on outstanding new construction permits. The value of these transactions is estimated to be $2.5 billion.

Over the past four months the office has processed approximately 4,000 assessable transactions resulting in $1.3 billion in supplemental assessed values. This will generate an additional $14 million in property tax revenues to the City and public schools (approximately $7 million to the City's general fund). We have also been able to clear nearly 800 appeals cases. Although this is significant progress, the larger, more complex cases are still pending before the AAB. These 1,500 pending cases consist of property owners requesting reductions of over $10 billion in assessed value. These cases have the potential of reducing property tax revenues by $116 billion.

I look forward to working with you on these issues. Please call me if you have any questions.

Item 6 - File 03-0400

Note: This item was continued by the Finance and Audits Committee at its meeting of April 30, 2003. The Finance and Audits Committee requested that the Port provide the Committee with a formal survey of comparable restaurant rents.

Department: Port of San Francisco

Item: Resolution approving Fourth Lease Amendment to Port Lease No. L-11859 between the Port Commission and Bundox Restaurant, Inc., a California corporation ("Tenant) for the lease of real property known as the Waterfront Restaurant located at Pier 7 1/2 (Broadway and The Embarcadero).

Purpose of Lease: To amend the rent structure and term of the Lease based on the terms and conditions set forth in the Fourth Amendment.

Lessor: Port of San Francisco

Tenant: Bundox Restaurant, Inc.

No. of Square Ft.: The existing Lease between the Port and Bundox Restaurant, Inc. is for 19,253 square feet of space on the subject premises located at Pier 7 ½ consisting of approximately 9,189 square feet of in-door dining space, 2,705 square feet of outdoor dining space and 7,359 square feet of public access space and parking space for 10 vehicles. The public access space consists of an outside area extending around the waters edge on the east side of the restaurant and outdoor dining areas on the north side of the restaurant, adjacent to the parking area.

Term of Existing Lease Between the Port and Bundox Restaurant Inc.: 20 years, beginning on July 1, 1996 and terminating on June 30, 2016

Proposed Term of Lease Between the Port And Bundox Restaurant Inc. Under the Proposed Amendment:

An extension of an additional eight years and seven months, from the original termination date of June 30, 2016 to January 31, 2025

Current Rental Payments to Port by Bundox Restaurant, Inc.:

Base Rent

Base Rent is currently $21,785 monthly (approximately $2.37 per square foot per month based on 9,189 square feet of indoor dining space), or $261,420 annually. The Base Rent is adjusted every three years for a cost of living adjustment based on the Consumer Price Index, and, in year ten (as of July 1, 2006), the Base Rent would be adjusted to the greater of a cost of living increase based on increases in the Consumer Price Index, or 50 percent of the average total monthly rent, including percentage rent, paid by the tenant for the previous three years of the lease.

Percentage Rent:

Bundox Restaurant, Inc. shall pay to the Port the greater of 1) the Base Rent or 2) the Percentage Rent calculated at seven percent of gross revenues from the operation of the restaurant.

Total rent collected by the Port between Calendar Year 1997 and Calendar Year 2002 is as follows:

Year	Amount of Gross Revenues	Total Percentage Rent Reported by the Port	Rent Credits Applied	Total Rent Paid to Port Net of Rent Credits
1997[1]	$2,795,503	$258,669	$61,575	$197,094
1998	6,258,790	438,115	96,246	341,869
1999	6,941,517	485,906	105,763	380,143
2000	6,628,727	464,011	92,406	371,605
2001	4,702,050	329,143	38,459	290,684
2002[2]	3,688,560	265,218	7,205	258,013
Total	**$31,015,147**	**$2,241,062**	**$401,654**	**$1,839,408**

Proposed Rental Payments to Port by Bundox Restaurant, Inc. Under the Proposed Amendment:

Base Rent Under the Proposed Lease Amendment: $10,000 monthly (approximately $1.08 per square foot per month based on 9,189 square feet of dining space) or $120,000 annually beginning retroactively to November 1, 2002 through the proposed termination date of January 31, 2025. After the "Threshold Date", which is the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000 annually, the Base Rent would be adjusted annually for a cost of living adjustment based on the Consumer Price Index. The proposed Base Rent is a reduction of $141,420 annually, or 54.1 percent, from the current Base Rent of $261,420 annually. Bundox would be required to pay "Deferred Rent", which is the difference between (a) the $10,000 monthly in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (b) the $21,785 monthly in Base Rent paid to the Port under the current lease, times the number of calendar months from November 1, 2002 to the Threshold Date. Such deferred rent is

[1] 1997 figures include November 1996 and December 1996 payments to the Port.

[2] 2002 figures do not reflect reduced rent paid by Bundox in November of 2002 and December of 2002 (see Comment No. 9).

required to be paid to the Port at either (1) the end of the lease term or 2) subsequent to the refinancing of the Lease or sale of the Waterfront Restaurant, to the extent that any excess sale proceeds exist after repayment of the Section 108 Loan (see Description below for information on the loan).

Percentage Rent Under the Proposed Lease Amendment:
Bundox Restaurant, Inc. shall pay to the Port the greater of 1) the Base Rent or 2) the Percentage Rent calculated at six percent of gross revenues, a reduction of one percent from the existing percentage of gross revenues from the operation of the restaurant.

Description: In December of 1994, the Board of Supervisors approved a new lease with Bundox Restaurant, Inc., or "Bundox", for the Waterfront Restaurant (File 65-94-17), which consists of a two-story building owned by the Port, public access space and a parking lot, at Pier 7 ½, on The Embarcadero at the foot of Broadway, for a 20-year lease period, at a Base Rent of $17,500 per month, or $210,000 annually, and a Percentage Rate of 7 percent. Prior to that time, Bundox had operated the Waterfront Restaurant at Pier 7 ½ under a lease with the Port since 1969.

The 1994 Lease provided for significant tenant improvements to the property, to be made by Bundox in two Phases, as explained by Ms. Carol Anderson of the Port on page 2 of Attachment II to this report. Under the provisions of the 1994 Lease, the Port was to pay for up to 50 percent of a maximum of tenant improvement total costs of $3,400,000, up to a maximum of $1,000,000 for Phase I and up to a maximum of $700,000 for Phase II, totaling a maximum of $1,700,000 (see Comment No. 1). The Port's share of the cost of tenant improvements, not to exceed $1,700,000, would be paid for in the form of Rent Credits, resulting in Bundox not having to pay to the Port the portion of the Percentage Rent which exceeded the Base Rent, over a ten year period (see Comment No. 4).

Ms. Anderson reports that because Bundox was unable to obtain financing for Phase I of the tenant improvements, the Lease became void on July 1, 1995 (Attachment II, page 3). Ms. Anderson reports that during the six-month period between December of 1994 and June 30, 1995, Bundox operated the Waterfront Restaurant under the 1994 Lease terms (i.e., the greater of Base Rent of $17,500 monthly or 7 percent of gross revenues). Bundox obtained preliminary approvals for loans from Heller First Capital and the Mayor's Office of Community Development (MOCD), which enabled Bundox to enter into the Lease. On June 24, 1996, the Board of Supervisors reaffirmed the previously voided (as of June 30, 1995) 20-year lease, for a new 20-year term from July 1, 1996 through June 30, 2016, and approved the First Amendment to the Lease and Consent to Encumbrance (File No. 65-94-17). Ms. Anderson notes that during the one-year period between June 30, 1995, when the 1994 Lease was voided, and June 24, 1996, when the Lease was reaffirmed, Bundox operated the Waterfront Restaurant on a month to month holdover basis under the pre-1994 Lease terms. According to Ms. Patel of the City Attorney's Office, under the Consent to Encumbrance, in the event of nonpayment of the MOCD loan by Bundox, MOCD would have the right to acquire the leasehold asset from Bundox which would include assuming obligations of the Lease, including all payments owed by Bundox to the Port. Accordingly, to pay the obligations of the lease, MOCD would have the option to either a) operate the Waterfront Restaurant or b) sublease the Waterfront Restaurant to a new owner subject to consent by the Port.

On November 1, 1996, Bundox entered into a Loan Agreement with the City through the MOCD Section 108 Loan Program, funded by the U.S. Department of Housing and Urban Development (HUD), in the amount of $3,250,000 (see pages 1 and 2 of Attachment III). The purpose of the loan was to fund the entire construction cost for Phase I and Phase II of the tenant improvements according to Mr. Lerma (see Comment No. 6). According to Ms. Anderson, the MOCD Section 108 Loan provided for more favorable

financing terms than the preliminary loan agreement with Heller First Capital. The Board of Supervisors approves acceptance and expenditure of Section 108 Revolving Loan Guarantee funds each year during approval of the Community Development Block Grant Program. However, as noted on page 2 of Attachment IV, provided by Mr. Lerma, the specific Section 108 Loan made by MOCD to Bundox, was not subject to Board of Supervisors approval.

On November 12, 1996, the Port Commission approved the Second Amendment to the Lease and Consent to Encumbrance (Resolution No. 96-117), which removed Heller First Capital as lender and consented to MOCD as lender, as explained on page 5 of Attachment II. The Port Commission approved the Third Amendment to the Lease (Resolution No. 97-70), on July 22, 1997, to provide for modifications to the size and location of the tenant improvements and allowed reduced rent[3], as provided for in the 1994 Lease, while the Waterfront Restaurant remained open for business, as explained on page 6 of Attachment II. According to Ms. Anderson, the Board of Supervisors did not approve the Second or Third Amendments to the Lease because the amendments only added minor modifications to terms of the Lease previously approved by the Board of Supervisors.

Ms. Anderson reports that without the proposed subject Fourth Lease Amendment restructuring of the Current Lease, Bundox will "most likely default" on the Lease, as explained on pages 2 and 3 of Attachment I, which would likely 1) require the Port to find another operator for the Waterfront Restaurant under less favorable terms than the existing Lease, and 2) result in the MOCD's inability to recover the remaining MOCD Section 108 Loan funds due from Bundox.

[3] Under the terms of the 1994 Lease, Bundox would pay reduced rent of $5,000 per month, for up to nine months, during the construction period in which the restaurant was closed for business. Under the Third Amendment to the Lease, because Bundox intended to keep its business open during construction of Phase I of the tenant improvements, the Lease was amended to provide for reduced rent of $5,000 per month, for up to nine months, for the construction period in which the restaurant was open. According to Ms. Anderson, work for Phase I and Phase II of the tenant improvements were performed simultaneously during the approximate nine-month period from May of 1997 through January of 1998.

In order to prevent the Waterfront from defaulting on the Lease, the Port has, according to Ms. Anderson, amended the rent structure and term of the Lease in the Fourth Amendment, as follows:

- The term of the lease would be extended by eight years and seven months, from the existing lease ending date of June 30, 2016 to the proposed lease ending date of January 31, 2025.

- The Base Rent would be reduced, from $21,785 monthly or $261,420 annually to $10,000 monthly or $120,000 annually, with annual CPI adjustments after the Threshold Date, for the entire lease term from November 1, 2002 through January 31, 2025.

- Deferred Rent, which is the difference between (a) $10,000 in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (b) $21,785 in Base Rent paid to the Port under the current Lease, times the number of calendar months from November 1, 2002 to the Threshold Date, is required to be paid to the Port at either (1) the end of the lease term or 2) subsequent to the sale of the Waterfront Restaurant, to the extent that any excess sale proceeds exist after repayment of the Section 108 Loan.

- Percentage Rent would be reduced, from seven percent of gross revenues, to six percent of gross revenues from November 1, 2002 through January 31, 2025.

  However, from November 1, 2002 through the Threshold Date, the Percentage Rent is subordinate to operating expenses so that Bundox would not be required to pay any monthly percentage rent if expenses exceed gross revenues. If the Waterfront Restaurant generates a net operating income in any month, then Bundox would, pay 50 percent of the net operating income as principal debt reduction to the MOCD loan and retain the remaining 50 percent.

Under the proposed lease, from the Threshold Date through January 31, 2012, the Percentage Rent is no longer subordinate to operating expenses. However, Bundox would be required to pay 50 percent of the percentage rent which exceeds the base rent amount as principal debt reduction to the MOCD loan, and the remaining 50 percent would be paid to the Port.

- Rent credits for the cost of Bundox's share of the tenant improvements would not be granted by the Port to Bundox.
- Payment upon transfer of the Lease in connection with a sale of the Waterfront Restaurant would be distributed first, to pay the remaining balance of the MOCD Section 108 Loan, second, to pay for Port Deferred Rent and last, to be shared equally by the Port and Bundox should any net funds remain. In addition, the Port could renegotiate a new rental rate with the new owner after one-year.

Pages 4 through 6 of Attachment I contains a description of the proposed amended lease terms.

Comments:

1. According to Ms. Anderson, the tenant improvements began in May of 1997 and were completed in January of 1998. Ms. Anderson advises that the Port anticipated tenant improvement costs in 1994 of $2,930,000 ($1,875,000 plus $1,055,000) as described on page 8 of Attachment II, but the actual costs upon completion of the tenant improvements in January of 1998 totaled $3,277,545. Ms. Anderson notes that under the 1994 Lease, the Port agreed to pay up to 50 percent of the tenant improvements up to a maximum of $1,700,000, or $1,638,773 of the total tenant improvement costs of $3,277,545, through rent credits granted to Bundox by the Port whish resulted in the Bundox not having to pay the Port the full amount of the Percentage Rent in excess of the Base Rent.

2. As previously noted, Deferred Rent is the difference between (1) $10,000 in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (2) $21,785 in Base Rent paid to the Port under the current Lease, times the number of calendar months from November 1, 2002 to the Threshold Date, which is the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000. As stated on page 8 of Attachment I, the Port estimates that the Deferred Rent would total approximately $600,984 ($21,784 less $10,000, the proposed monthly rent, or $11,784 X 51 months), based on an estimated Threshold Date of February 1, 2007, which is the latest date that the Threshold Date can occur. The Budget Analyst concurs with these calculations based on the assumption that the Threshold Date occurs on February 1, 2007. If the restaurant revenues exceed $6,000,000 prior to February 1, 2007, the total deferred rent would be less than $600,984 and the Base Rent would be subject to CPI adjustments before February 1, 2007.

3. As noted on page 7 of Attachment I, the Port estimates that total reduced rent to the Port under the proposed Fourth Amendment would be an estimated $2,003,679 for the period from 2003 through 2014, as follows:

- $364,186 in reduced rent, resulting from the reduction in percentage rent by one percentage point from 7 percent to 6 percent for the period from 2003 through 2014.
- $790,756 in reduced rent, resulting from the provision that the Port receives no percentage rent payments above the Base Rent for the period from 2003 through 2006; and
- $848,737 in reduced rent, resulting from the provision that the Port receives only 50 percent instead of 100 percent of the percentage rent due to the Port above the Base Rent for the period from 2007 through 2012.

Based on the Port's assumptions of revenue growth, as shown on pages 10 and 11 of Attachment I, the Budget Analyst concurs with these calculations, that

the proposed Fourth Lease Amendment would result in reduced rental revenue to the Port of $2,003,679. If Bundox is able to pay the Port an estimated $600,984 in Deferred Rent as noted on page 7 of Attachment I, total estimated reduced rent to the Port under the Fourth Amendment would be $1,402,695 ($2,003,679 less $600,984). However, this reduced rent would be partially offset by the Port not having to apply future rent credits to Bundox as explained in Comment No. 4.

4. As noted above, under the 1994 Lease, the Port would apply rent credits to the rent Bundox is to pay to the Port such that Bundox would not pay to the Port the full amount which the Percentage Rent exceeds the Base Rent. Based on actual tenant improvement costs, actual rent credits which could have been granted by the Port to Bundox total $1,638,773. Under the proposed Fourth Amendment, the Port would no longer have to apply rent credits to Bundox for the amount of the Percentage Rent in excess of Base Rent. Page 2 of Attachment I shows that the total rent credits applied to date against rent is $401,655, with the balance of $1,237,118 in rent credits remaining ($1,638,773 less $401,655). Total estimated reduced rental revenues to the Port, therefore, ranges from $165,577, if Bundox pays back to the Port Deferred Rent ($1,402,695 less $1,237,118) to $766,561 if Bundox is not able to pay the Port back the Deferred Rent ($2,003,679 less $1,237,118).

5. Ms. Anderson reports on page 8 of Attachment I that the proposed rent under the Fourth Amendment is comparable to San Francisco market rents. Ms. Anderson states that the Port determined market rents, based on an informal survey of similarly sized "white tablecloth" restaurants in San Francisco. As noted on page 8 of Attachment I, Ms. Anderson states that,

> "the collective opinion by brokers is that the current market rate for a 'white tablecloth' restaurant in the San Francisco Bay Area comparable to the Waterfront would be in the $1.00/s.f. -$2.00/s.f. range, with percentage rent at about 5%."

As noted above, the proposed Fourth Lease Amendment is approximately $1.08 per square foot per month for the Base Rent and six percent of gross revenues under the percentage rent, which is at the low end of the range of $1.00 to $2.00 per square foot cited above to be the market value for base rent. Also, since future CPI adjustments to the Base Rent will not occur until the Threshold date is reached (the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000) the Base Rent is likely to be considerably below market rates over the remaining term of the current lease (through June 30, 2016) and the extended term of the lease under the Fourth Lease Amendment (July 1, 2016 through January 31, 2025).

6. According to Mr. Al Lerma of the MOCD, the Section 108 Loan Program provides loans exceeding $100,000 to businesses that support the economic development initiatives of the City including reducing unemployment and maintaining a diversified economic base. Page 1 of Attachment III provided by Mr. Lerma contains an explanation of why Bundox qualified for a MOCD Section 108 Loan, the purpose of the loan, a description of the loan program, the loan payment terms, and an explanation of the financial reporting requirements under the loan. As noted on Page 3 of Attachment III, MOCD receives periodic financial statements from Bundox.

7. According to Mr. Lerma, MOCD received, the audited financial statements of Bundox for 2001 which showed a net loss by Bundox for the fiscal year from the operation of the Waterfront Restaurant. As explained on page 1 of Attachment IV in a memorandum provided by Mr. Lerma, if Bundox defaults on the Section 108 Loan, then the MOCD would a) have to pay rent to the Port in order to keep the lease in good standing, and b) be required to continue making loan payments to HUD for the outstanding Section 108 loan balance. As further stated on pages 1 and 2 of Attachment IV, the source of funds for such rent payments and loan payments would be from 1) program income generated from MOCD's revolving loan funds, and 2) the annual Community Development Block Grant.

8. According to Mr. Lerma, the MOCD will agree to amend the Loan Agreement to 1) extend the term of the loan period by 13 years, from the current ending date of February 2012 to the ending date of January 31, 2025, thereby reducing the monthly loan payment by $11,105, from $33,000 to $21,895 and 2) reduce the interest rate on the loan from nine percent to six percent. Page 3 of Attachment IV, provided by Mr. Lerma compares the debt service under the Original Loan terms with the debt service under the MOCD Revised Loan terms.

9. According to Ms. Anderson, Bundox began paying reduced Base Rent of $10,000 on November 1, 2002, prior to Board of Supervisors approval, on the expectation that the Board of Supervisors would approve the proposed lease amendment. According to Ms. Patel, Bundox is legally obligated to pay the Port the difference between the current rental rates and rental rates collected since November 1, 2002 if the proposed Fourth Amendment to the Lease is not approved by the Board of Supervisors. The Budget Analyst notes that the Port does not have assurance that any additional rent payments due to the Port by Bundox from November 1, 2002 would be paid if this resolution were not approved by the Board of Supervisors. The Budget Analyst also notes that the proposed legislation does not designate an effective date of November 1, 2002 for the Fourth Amendment. Therefore, the Budget Analyst recommends amending the proposed resolution to include the November 1, 2002 effective date.

10. Under the proposed Fourth Amendment, the Port would receive reduced rent ranging from an estimated minimum of $165,577 to an estimated maximum of $766,561 (see Comment No. 4). However, as noted in Comment 5, the proposed Fourth Lease Amendment is approximately $1.08 per square foot per month for the Base Rent, which is at the low end of the range of $1.00 to $2.00 per square foot cited by the Port as market value for the base rent. Also, since future CPI adjustments to the Base Rent will not occur until the Threshold date is reached (the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000), the Base Rent is

likely to be considerably below market rates over the proposed extended term of the lease which is January 31, 2025 under the subject Fourth Lease Amendment.

11. According to Ms. Anderson, the Port has on occasion entered into agreements for temporary reductions in rent with Port tenants when such tenants face temporary financial difficulties. However, such tenants are then required to reimburse the Port in full, any amounts not paid under such temporary rent reductions. Ms Patel states that, under Appendix B3.581(g) of the City's Charter, the Port has the exclusive authority to administer leases granted by the Port Commission. Ms. Anderson advises that such written payment agreements do not require modifications to the Lease, and are not subject to Board of Supervisors approval since the Port does not waive the right to full rent payments under the terms of the agreements.

Recommendations: 1. In accordance with Comment No. 9, amend the proposed resolution to include the November 1, 2002 effective date of the Fourth Modification to the Lease.

2. Approval of the proposed resolution, as amended, is a policy matter for the Board of Supervisors.

MEMORANDUM

TO: Leanne Nhan, Budget Analyst Office

FROM: Carol Anderson, Port of San Francisco

RE: Waterfront Restaurant Lease Amendment

DATE: April 4, 2003

Below are the Port's responses to the questions posed by you in your emails to Ken Winters.

What is the history of the Waterfront Restaurant at the Port?

The Bundox Restaurant Inc. ("Waterfront") has operated at the same location since 1969 when Al and Cheryl Falchi bought the Pier 7 Café. The restaurant operated until 1973 when it was severely damaged by a fire that destroyed Pier 7. A new building was constructed and, in July 1975, the Waterfront Restaurant reopened at the present location. In 1994, the Port and the Waterfront entered into a new 20-year lease in the form of Port Lease L-11859 (the "Lease").

In 1996, the Falchi's proposed to expand and significantly remodel the Waterfront Restaurant. To fund the proposed capital and tenant improvements, the Falchi's obtained a $3.25 Million loan from the Mayor's Office of Community Development ("MOCD"), referred to as the "MOCD Loan". Approximately $1.4 Million of the MOCD Loan were utilized to build public access improvements required by BCDC. The MOCD Loan also required the Borrower to create and maintain 85 new full-time jobs for City residents.

Because the proposed improvements increased the value of the Port's real estate asset as well as public access on the waterfront, the Port agreed to participate in the capital investment through credits applied against rent payable by the Waterfront. Specifically, the Port agreed to give Waterfront a rent credit, up to a maximum of $1.7 million, or approximately 50% of percentage rent[1] payable in excess of minimum rent. The Port and Falchi's amended the terms of the Lease to reflect this agreement in 1997.

The Waterfront has consistently generated rental income to the Port since 1969. In addition, the restaurant serves as an important anchor tenant at the foot of Broadway and the Embarcadero.

[1] In a typical office lease, the tenant pays rent calculated as a specific dollar amount per each square foot occupied ($/s.f.). In a typical restaurant lease rent is calculated as the greater of a specific dollar amount per each square foot occupied by the restaurant ($/s.f.) *versus* a percentage of gross sales produced on the premises.

What is the current exact square footage of the Waterfront?
The Waterfront now totals 11,894 square feet in dining area, of which 9,189 s.f. is interior dining space which may be used year-round, with an additional 7,359 square feet in public access and parking areas.

What are the net revenues received by the Port as a result of the Lease. from 1997 to the present?

Below, please find a summary of the actual numbers taken from the percentage rent reports for the period 1997-2002 for Bundox. Though I recognize that in some cases the numbers do not add up as you might expect them to, they are the actual numbers per these reports. The numbers below vary slightly from those originally presented to you due to rounding.

Year	Gross Sales	Total % Rent Due to Port	Minimum Rent	Percent Rent Overage Paid to Port	Percent Rent Utilized as Rent Credits to Waterfront
1997	$ 2,795,503	$ 195,685	$ 110,000	$ 87,094	*$61,575
1998	$ 6,258,790	$ 438,115	$ 197,500	$ 144,369	$ 96, 246
1999	$ 6,941,517	$ 485,906	$ 221,498	$ 158,645	$ 105,763
2000	$ 6,628,727	$ 464,011	$ 232,995	$ 138,610	$ 92,406
2001	$ 4,702,050	$ 329,143	$ 232,995	$ 57,689	$ 38,459
2002	$ 3.688.560	$ 258.199	$ 247.206	$ 10.807	$ 7.205
	$31,015,147	$ 2,171,059	$ 1,242,194	$ 597,214	$ 401,655

*Total of Percentage Rent Utilized as Rent Credits from Lease Commencement through 1997, per Port percentage rent records. The rent credit balance totals $1,298,346.

What problem is being addressed by the Lease amendment?
The Falchi's expected to repay the sizeable MOCD Loan undertaken in 1997 for the capital improvements through increased sales resulting from their total renovation of the Waterfront Restaurant. In addition to simply providing more cash flow, the increased sales would enable the Falchi's to utilize the rent credits provided by the Port as its contribution towards the capital improvements. The Falchi's could apply the dollars saved as a result of the rent credits against the monthly MOCD loan payments.

However, the sales projections turned out to be too optimistic. Waterfront's sales began to drop in late 2000 due to the decline in the S.F. Bay Area high-tech market and overall economy. Sales were further negatively impacted by the events of September 11, 2001. Beginning in late 2000 and continuing to today, sales have declined to a point where they are not sufficient to produce any significant percentage rent in excess of minimum rent. As a result of this low level of sales, the Falchi's have been unable to receive rent credits for their capital investments as contemplated by the Lease. Without the expected rent relief and excess cash flow, the Waterfront has found it increasingly difficult, if not impossible, to cover its fixed costs, keep current on Port minimum rent, and to make interest payments on the sizeable MOCD Loan.

Unless the Waterfront is provided immediate and significant economic relief, it will most likely default on the Lease. Such a default would adversely impact both the Port and the City. The Port would be forced to find another operator for the Waterfront, presumably through a bidding process. Whether an operator of an upscale restaurant can be found in this economy is very uncertain.[2] Most likely, the Port would have to offer more favorable terms than those in the Lease, or contemplated in the proposed lease amendment, to attract a new operator in this economy. Even if an operator were found, the process of finding a new operator, negotiating a deal and seeking all approvals of the deal would take many months to complete, during which time the Port would receive absolutely no rental income.

The City would be negatively impacted by a default as well. As noted above, the City, acting through MOCD, loaned the Falchi's \$3.25 Million for specified leasehold improvements. The MOCD Loan was secured primarily by a leasehold deed of trust. If the Falchi's default on the loan, the City could seek to foreclose the leasehold deed of trust. However, the Lease would provide little or no economic relief to the City. Given the state of the economy, the City would not be able to find a new operator willing to assume the terms of the existing Lease <u>and</u> pay some or all of the MOCD Loan. Accordingly, MOCD would likely have a relatively small recovery on its loan. This loss of loan funds would directly lower, dollar for dollar, the amount of funds available to MOCD for future economic development loans (and result in a concomitant loss of future jobs that would have been created by these loans).

<u>What is the solution to the problem?</u>
The solution to the problem is to prevent the Waterfront from defaulting on the Lease and MOCD Loan and enable it to continue as an economically viable, long-term tenant of the Port and the community of San Francisco. Towards this goal, MOCD and the Port have negotiated with the Waterfront a comprehensive restructuring of the MOCD Loan and Lease. This restructuring is necessary to enhance the Waterfront's cash flow, which will in turn enable the Waterfront to continue repaying the MOCD Loan and rent to the Port.

The proposed Lease restructuring is predicated on a cash flow model that fits within the projected operations of the Waterfront. Essentially, it provides the Waterfront approximately four years of "breathing room" to get back on its feet, as described below.

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[2] In fact, given the current restaurant rental market, the Port believes that no viable substitute tenant for the Waterfront will be found in the foreseeable future. The failure rate of "white table" restaurants in San Francisco is at an all time high and finding replacement tenants in this market is extremely difficult, if not impossible. According to Golden Gate Restaurant Association, the San Francisco restaurant industry lost approximately 14% (annualized) of its restaurants during 2001. This would total approximately 450 restaurants out of a total of 4200 restaurants. As example of this, the Port is in the process of executing a lease assignment at Pier 33 north for a high end restaurant space for 6,772 s.f., minimum rent of \$1.04/s.f., percentage rent of 5% for year 1, 6% for year 2 and 7% for year 3 and thereafter. A restaurant space at Pier 33 south, though vastly inferior to the Waterfront, has been vacant for over a year, and totals approximately 4,865 s.f.. This space is under lease to a master tenant who has been attempting to sublease the restaurant at \$6,000 per month, or \$1.25/s.f., with no percentage rent, and to date has been unsuccessful at leasing the space.

While a more detailed description of the Lease amendment terms is provided further below, the general terms of the Lease modification are as follows:

(1) Extension of the term of the Lease from August 30, 2016 to February 1, 2025;
(2) Reduction of the base rent from $21,784 to $10,000 per month;
(3) Reduction of the percentage rent from 7 percent to 6 percent;
(4) Application of a portion of the percentage rent payable to the Port instead to the MOCD Loan as accelerated principal paydown for a certain time period; and
(5) Participation by the Port in refinance or sales proceeds.

The MOCD Loan amendment is not subject to Board of Supervisors approval. However, the general terms of this amendment are as follows:

(1) Reduction of the interest rate from 9 percent to 6 percent; and
(2) Extension of the loan term and amortization schedule to January 31, 2025, thereby reducing loan payments from approximately $33,000 to $21,895 per month.

Description and Analyses of Lease Amendment Terms

Term:
The Port will extend the term of the lease to January 31, 2025.[3] A 20+ year lease term increases the value and desirability of the Waterfront with regard to a potential sale or refinance, due to the ability of a purchaser to amortize its investment over a commercially reasonable period of time. Creating such increased value is important to the City and Port because it would better enable the City to recover the MOCD loan funds and the Port an opportunity to recapture its "deferred rent" (as explained below).

Monthly Base Rent:
Commencing on November 1, 2002 and continuing throughout the Term, the Waterfront agrees to pay a monthly base rent of Ten Thousand Dollars ($10,000.00). After the Threshold Date, the base rent will be adjusted in direct proportion to the percentage increase in the Consumer Price Index (CPI). The Threshold Date is the earlier of (a) the first day of the calendar month following the date when gross receipts exceed Six Million Dollars ($6,000,000) in a Fiscal Year, or (b) February 1, 2007.

Deferred Rent:
The Port has subordinated a certain amount of rent as a result of Waterfront's current level of sales revenues and the anticipated time Waterfront will need to emerge from its current economic situation.

"Deferred Rent" is the difference between (i) $10,000 (base rent paid by the Waterfront from November 1, 2002 to the Threshold Date); and (ii) $21,784.79, (the base rent under the current Lease) times the number of calendar months from November 1, 2002 to the Threshold Date. The Port estimates the Deferred Rent to total $600,984, based on a

[3] The Lease extension of approximately 9 years coincides with the MOCD loan extension, so that both the Lease and MOCD Loan will have co-terminus expiration date.

Threshold Date of February 1, 2007 ($11,784.79 X 51 months). Deferred Rent will be repaid to the Port at the end of the Lease term or when and if there is a sale of the Waterfront Restaurant to the extent excess sale proceeds exist after repayment of the MOCD loan.

Percentage Rent:
Waterfront agrees to pay percentage rent to Port in the amount of six percent (6%) of gross receipts. Percentage Rent due each month is limited to the amount such percentage rent exceeds the base rent for said month—in no event will total rent to the Port exceed 6% of gross sales revenues. The following outlines how the Percentage Rent will be payable during the term of the Lease.

1. Commencing from November 1, 2002 to the Threshold Date, Waterfront's obligation to pay percentage rent will be subordinate to the payment of its operating expenses. That is, Waterfront will not have to pay any monthly percentage rent if its expenses exceed its income. But, to the extent Waterfront generates a net operating income in any month, Waterfront must pay 50% of that net operating income to MOCD as additional principal debt reduction of the MOCD Loan in lieu of paying percentage rent to the Port.[4] Waterfront will be entitled to retain the remaining 50% of NOI. This recovery period is designed to provide the flexibility to Waterfront to cover current expenses during the critical next four years.

2. For the period commencing from the Threshold Date to January 31, 2012, Waterfront will make monthly payments of percentage rent based upon its gross receipts (without regard to the its operating expenses). During this period, Waterfront will owe the Port the greater of base rent or 6% of gross sales. However, the Port will require Waterfront to pay 50% of the overage amount (i.e., the difference between 6% of gross sales and base rent) as principal debt reduction of the MOCD Loan. This overage amount is expected to reduce the MOCD principal amount additionally by approximately $765,000. This will significantly shorten the time necessary to pay down the MOCD loan, which is amortized over 20 years per the proposed modification.

3. For the period commencing from February 1, 2012 and continuing for the remainder of the Term, Waterfront will owe the Port the greater of base rent or 6% of gross sales, with no portion of such amount paid to MOCD.

Deletion of Improvement Credits:
The concept of rent credits for improvements made to the premises by Waterfront will be deleted in its entirety. As explained above, rent credits were structured into the Lease to reflect that portion of the capital and tenant improvements adding public access and value

[4] The maximum amount of NOI Waterfront would have to pay to MOCD would be the amount that would otherwise be due under percentage rent as calculated based on gross receipts (i.e., 6% of gross receipts, less base rent).

to the Port's asset. However, because of the low sales, the Waterfront was not able to utilize most of these rent credits.

The restructured Lease provides Waterfront a more immediate and direct means of receiving credit for its capital improvements than the original rent credit approach. As explained above, the base rent has been reduced by $11,784.79/month and the percentage rent from 7% to 6%/month for the life of the Lease term. In addition, the Port receives no percentage rent payments until the Threshold Date, After the Threshold Date until January 31, 2012, the Port will share 50% of the percentage rent payments with MOCD. Overall, the above modifications enable Waterfront to fully recapture the $1.7 million originally contemplated in the Lease, and are based on Waterfront Restaurant sales projections.

Payments Upon Transfer of Lease and Refinancing of Debt:
Waterfront agrees that if, at any time during the Term, the Waterfront transfers this Lease in connection with a sale of the restaurant business or any of the assets of the restaurant business, the net proceeds will be distributed as in a priority order. First, the proceeds will be used to pay off the balance of the MOCD loan. Next, the proceeds will go to pay the Port Deferred Rent. The remainder of the proceeds, if any, will be shared equally by the Port and Waterfront. As well, the Port would have opportunity to renegotiate new lease rates with a new owner after a year. The year-long time interval provides the Port the time to understand the business and realistically project performance of the new owner/operator so as to obtain the most favorable terms to the Port when it re-negotiates the new lease rates.

What are safeguards for the future?
Waterfront will be required to follow and implement the recommendations of a consultant, retained under contract with the San Francisco Small Business Development Center, who is currently performing a review of the Waterfront's operations with the goal of increasing the profitability of the restaurant. The Port has also required that the Waterfront provide annual financial statements, including profit and loss and balance sheet, at the end of each fiscal year prepared by an independent accountant and certified by the tenant as fairly representing tenant's financial condition. In addition, the Port will continue to have the default remedies under the lease so if Waterfront fails to perform, Port can pursue such remedies.

What is the estimated total reduction in revenue to Port as result of reduction in percentage rent?
Sales and expense projections provided by the Waterfront through 2007 were utilized to analyze cashflow during the lease. The Port extended these projections utilizing a 3% growth rate through 2014, acknowledging that even extending projections this far out is not very useful, as many variables come into play that influence performance. However, utilizing figures per the attached spreadsheets and per the proposed structure, for the period 2003 – 2014, the difference in percentage rent is estimated as follows:

Total Percentage Rent at 7%:	$ 3,389,308
Total Percentage Rent at 6%:	$ 3.025.122
Difference/Reduction Estimated in Rent to Port:	$ 364,186

As discussed above, the current market rate for percentage rent for a restaurant the size of the Waterfront is in the 5%-6% range.

What is the estimated total reduction in revenue to Port as result of reduction in rent?
The estimated total reduction in revenue to the Port for the period projected from 2003-2014 as a result of a reduction in the rent consists of four categories as follows:

(1) Deferred Rent: The Port has subordinated a certain amount of rent as a result of Waterfront's current level of sales revenues and the anticipated time Waterfront will need to emerge from its current economic situation. "Deferred Rent" is estimated to total $600,984. However it must be noted that this amount may be repaid to the Port per the structure when and if the Waterfront sells the restaurant, by utilizing net sale proceeds remaining after total repayment of the MOCD loan.

(2) Per the proposed structure, as discussed above, the revenue lost to the Port resulting from the difference of percentage rent of 7% and 6 % for this time period totals $364,186.

(3) Per the proposed structure, the Port's percentage rent overage over minimum rent is subordinate to the Waterfront's NOI. Therefore, the Port will forego approximately four years (2003-2006) of percentage rent. Per the attached spreadsheet, calculating percentage rent at the proposed 6%, this amount totals $790,756.

(4) Per the proposed structure, 50% of the percentage rent due to the Port from the Threshold Date (estimated at February 1, 2007) through 2012 is to be paid instead as priority principal repayment to MOCD. Per the attached spreadsheet, calculating percentage rent at the proposed 6%, this amount totals $ 848,737.

Therefore, assuming deferred rent is paid back, the potential revenue concession made by the Port during this period would be $1.4 Million. If deferred rent is not collectible, this concession would increase to potentially $2 Million.

Note that during this period, the reduction in minimum rent is irrelevant because sales are high enough to place the lease in percentage rent.

What is the estimated "deferred rent" between November 1. 2002 and Threshold Date?
The Lease amendment provides that Deferred Rent stops accruing the earlier to occur of February 1, 2007 or the date when Waterfront's sales reach $6 million. The Port cannot predict with certainty when Waterfront's sales will increase to $6 million, and therefore has utilized the date of February 1, 2007. Given this, the maximum "deferred rent" will equal $600,984 ($11,784.79 X 51 months).

Provide a list of other Port/City restaurant leases with similar NOI provisions:
There are no other Port restaurant leases which provide that percentage rent is subordinate to Net Operating Income. This provision was structured into the deal because of the need to provide immediate temporary relief to the Waterfront. Note that this is available only for the period November 1, 2002 until the Threshold Date, estimated at the outside at February 1, 2007.

Provide further explanation of transfer language re "...any unpaid Deferred Rent forgiven in event of an approved sale":
Deferred rent is to be repaid only from net profits remaining upon sale of the restaurant. As explained above: First, net proceeds of a sale or refinance will first go to pay any unpaid balance remaining on the MOCD Loan; Second, should any funds remain, they will then go towards repayment to the Port of any Deferred Rent accrued between November 1, 2002 and the Threshold date, estimated at approximately $600,984. In the event the Falchi's are unable to sell the Waterfront at a sufficiently high price to pay both the MOCD and Deferred Rent, any unpaid Deferred Rent will be forgiven by the Port and the new assignee of the Lease will not be obligated to pay any such remaining amount. The Port reserves the right to consent to a sale. In the event of a refinance, however, should such a refinance not produce sufficient proceeds to pay off the deferred rent, this balance will be carried forward.

The Proposed Lease is at Current Market
As discussed in the April 4th memo, the Port believes that proposed lease rates are comparable to the current San Francisco restaurant market. The proposal reflects rents typical of a restaurant of Waterfront's size, large relative to most, and quality, operating in today's economic climate. No new restaurant leases have been executed for a number of years in San Francisco for restaurants comparable in size and quality to the Waterfront. However, the collective opinion by brokers is that the current market rate for a "white tablecloth" restaurant in the San Francisco Bay Area comparable to the Waterfront would be in the $1.00/s.f. -$2.00/s.f. range, with percentage rent at about 5%. According to brokers, percentage rents from 5% on the low side to 7% at the absolute highest, are the range in which restaurants can afford to pay rent and stay in business.

Informal restaurant "comparables" as from various brokers include Boulevard Restaurant at Mission/Embarcadero, which reportedly grosses $8 million annually, has a minimum base rent $2.00-$3.00/s.f. and percentage rent between 5% and 6%, and One Market Restaurant which reportedly has a minimum base of approximately $2.00/s.f., and percentage rent of 5%. Max's Café near PacBell Park recently closed due to the economic climate, and reportedly totaled 12,000-13,000 s.f. with a rental rate of $2.00/s.f.

The proposed rates for the Waterfront restaurant are well within the range of rates as discussed above. Waterfront's minimum rent per square foot when calculated ranges from $1.08/s.f. based on the interior dining area of 9,189 s.f. which is utilized year round, down to $.84/s.f., when the two out door dining areas, totaling an additional 2,705 s.f., are added to the calculation. The percentage rent of 6% is mid-range of the generally accepted range for restaurants rents

	Minimum Rent	Percentage Rent
Current S.F. Market Rent:	**1.00/s.f.-$1.50/s.f.**	**5%-6% of gross sales**
Proposed Waterfront Rent:	**$.84/s.f. - 1.09/s.f.**	**6% of gross sales**
Current Waterfront Rent:	$1.78/s.f.	7% of gross sales

WATERFRONT

Projected @ 5 % Growth	2003	2004	2005	2006	2007	2008
GROSS REVENUES	$ 4,825,443	$ 5,305,787	$ 5,395,151	$ 5,652,891	$ 5,923,518	$ 6,219,694
OPERATING EXPENSES						
Total Cost of Sales	$ 1,287,242	$ 1,415,966	$ 1,437,948	$ 1,509,845	$ 1,585,337	$ 1,632,897
Total Cost Of Labor	$ 1,720,552	$ 1,892,607	$ 1,918,250	$ 2,014,163	$ 2,114,871	$ 2,178,317
Operating / General Expenses	$ 1,135,409	$ 1,186,008	$ 1,216,104	$ 1,257,240	$ 1,299,887	$ 1,338,884
Taxes	$ 39,320	$ 43,252	$ 43,826	$ 46,017	$ 48,318	$ 50,818
Interest	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447
Bank Cards & Other Discounts	$ 157,757	$ 162,499	$ 167,374	$ 172,395	$ 177,567	$ 182,894
FTB Minimum Annual Tax	$ 800	$ 800	$ 800	$ 800	$ 800	$ 800
Total Operating Expenses	$ 4,449,528	$ 4,809,579	$ 4,892,749	$ 5,108,907	$ 5,335,228	$ 5,493,058
Port Percentage Rent 6%	$ 289,527	$ 318,347	$ 323,709	$ 339,173	$ 355,411	$ 373,182
PORT Minimum Rent Payment	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000
Percentage Rent Overage	$ 169,527	$ 198,347	$ 203,709	$ 219,173	$ 235,411	$ 253,182
MOCD Loan Payment	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735
Total Lease/Loan Expenses	$ 382,735	$ 382,735	$ 382,735	$ 382,735	$ 618,146	$ 635,917
NET OPERATING INCOME	$ (6,820)	$ 113,473	$ 119,667	$ 161,249	$ (29,856)	$ 90,719
NOI Distribution						
MOCD as Addl Principal Paydown	$ -	$ 56,736	$ 59,833	$ 80,624	$ -	$ -
Waterfront as Cushion	$ -	$ 56,736	$ 59,833	$ 80,624	$ -	
Percentage Rent Overage Distribution						
Total Percent Rent Overage	N/A	N/A	N/A	N/A	$ 235,411	$ 253,182
Overage to MOCD (Addl Prin. Paydown)	$ -	$ -	$ -	$ -	$ 117,706	$ 126,591
Overage to PORT	$ -	$ -	$ -	$ -	$ 117,706	$ 126,591

2009	2010	2011	2012	2013	2014	
$ 6,530,679	$ 6,857,213	$ 7,200,073	$ 7,560,077	$ 7,938,081	$ 8,334,985	
$ 1,681,884	$ 1,732,341	$ 1,784,311	$ 1,837,840	$ 1,892,976	$ 1,949,765	
$ 2,243,667	$ 2,310,977	$ 2,380,306	$ 2,451,715	$ 2,525,266	$ 2,601,024	
$ 1,379,051	$ 1,420,422	$ 1,463,035	$ 1,506,926	$ 1,552,134	$ 1,598,698	
$ 53,318	$ 55,818	$ 58,318	$ 60,818	$ 63,318	$ 65,818	
$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	
$ 188,381	$ 194,032	$ 199,853	$ 205,849	$ 212,024	$ 218,385	
$ 800	$ 800	$ 800	$ 800	$ 800	$ 800	
$ 5,655,548	$ 5,822,837	$ 5,995,070	$ 6,172,395	$ 6,354,965	$ 6,542,937	
$ 391,841	$ 411,433	$ 432,004	$ 453,605	$ 476,285	$ 500,099	
$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 1,440,000
$ 271,841	$ 291,433	$ 312,004	$ 333,605	$ 356,285	$ 380,099	
$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	
$ 654,576	$ 674,168	$ 694,739	$ 716,340	$ 739,020	$ 762,834	
$ 220,555	$ 360,208	$ 510,263	$ 671,342	$ 844,095	$ 1,029,213	
$ -	$ -	$ -	$ -	$ -	$ -	
$ 271,841	$ 291,433	$ 312,004	$ 333,605	$ 356,285	$ 380,099	
$ 135,920	$ 145,716	$ 156,002	$ 166,802	$ -	$ -	
$ 135,920	$ 145,716	$ 156,002	$ 166,802	$ 356,285	$ 380,099	$ 1,585,122
						$ 3,025,122

BUNDOX (WATERFRONT RESTAURANT LEASE AMENDMENT COMPARISON

ORIGINAL LEASE L-11859

Background:	Bundox had been a tenant at Pier 7/1/2 since 1969. Bundox Requested a new lease with a proposed business plan for restaurant renovation and expansion requiring significant capital investment.
Date of Lease:	December 20, 1994.
Port Commission Approval:	Resolution No. 94-133 October 25, 1994
Board of Supervisor Approval:	Resolution No: 1035-94 File No: 65-94-17 Ordinance No. 412-94 December 19, 1994
Premises:	Restaurant: 9,650 s.f.; Parking: 2,828 s.f.; Outdoor Patio/Public Access: 8,668 s.f.
Lease Term:	20 Years, to Commence as of "Commencement Date" or by 7/30/92, or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms, and (v) receipt of Port Building Permit for Phase I.
Percentage Rent:	7% of Gross Receipts
Minimum Base Rent:	$5,000/mo until Phase I TI's done during time restaurant closed and under construction for a maximum of 9 months; then $17,500/mo, with CPI increase every 3 years.

Tenant Improvements:	Per Plant Construction Preliminary Construction Estimate, September 10, 1993, partially modified March 23, 1994. Note this estimate did not include other costs associated with the overall renovation, such as furniture, fixtures, and equipment, as well as additional soft costs. Phase I Improvements: Budget: $1.875 Million. Building area expansion and improvements to the second floor of the building Phase II Improvements: Budget $1.055 Million. Outside of building. Demolition of finger pier and construction of replacement pier; construction of two outdoor eating areas, one valet parking area, and new public access walkway along water.
Rent Credits from Port:	Allowable at 50% of Certified Costs by Waterfront: Phase I: Maximum Rent Credits, $1 million Phase II: Maximum $700,000; Rent Credits returned to Waterfront at rate of 40% of the Percentage Rent due to Port in excess of Minimum Base Rent.
Financing:	None described in lease. However, Commencement Date contingent on Waterfront obtaining financing of TI's at commercially reasonable terms for Phase I improvements.
Other:	Affirmative Action Plan required per lease.
Comments:	Lease was Void as Waterfront did not fulfill requirement for Lease Commencement. Commercially reasonable financing for TI's not obtained, therefore no building permit was issued by the Port. However, Waterfront was still in possession and continued to pursue financing.

REAFFIRMATION AND AMEND. TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	Once Lease became Void as of 7/1/95, Bundox asked the Port to reaffirm the Lease, extend the time for Bundox to obtain financing until June 30, 1996, to include certain modifications to the Lease and to consent to encumbrance of the leasehold by Bundox's proposed lenders. In early 1996, Bundox entered into negotiations for financing with Bank of America and the Small Business Administration. In June 1996, Bundox's negotiations with B of A and SBA stalled and Bundox entered into negotiations with Heller First Capital. The Reaffirmation was modified to replace BofA and SBA with Heller First Capital and the SF Mayor's Office of Community Development (MOCD). Heller provided the Port with satisfactory proof of a loan commitment to satisfy the Lease condition and the Lease went into effect July 1, 1996.
Date of Amendment:	June 28,1996
Port Commission Approval:	Resolution No: 96-15 February 27, 1996
Board of Supervisor Approval:	File No: 65-96-10 Ordinance No: 261-96 June 24, 1996
Lease Term:	Commencement Date or June 30, 1996, or Lease is Void. Term up to 22 years if Phase I/II done at same time; Term of 20 years at completion of Phase I TI's or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms as evidenced by a commitment letter of loan authorization issued by a qualified lender.
Financing:	Preliminary Approval of Heller First Capital ("Heller") and the MOCD as approved "Lenders".

Encumbrance:	Consent to the encumbrance of Bundox's Leasehold by lenders through a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor of both Heller, for a note not to exceed $1.25 Million, and MOCD, with a note not to exceed $2.0 Million.
Lease Amendments regarding Security Interests of Lender:	If Lease terminates for any reason or is rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, lender has the right to enter into a new lease on the same terms and conditions if they have remedied any monetary defaults; Lenders can assign the lease without the Port's consent in connection with lender's security documents if such assignment is by judicial or non-judicial foreclosure or deed in lieu of foreclosure, and any other assignments to a third party at a foreclosure sale must be approved by the Port; Lenders must consent to any voluntary surrender of the Lease; disposition of any insurance proceeds in case of loss, any eminent domain or condemnation awards or damages payable under the lease shall be first made to lenders as to their deeds of trust, and the Port waives the right to obtain a lien on any thing that may constitute a part of the fixtures on the Premises during the term of the loans.

AMENDMENT NO. 2 TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	The lease went into effect on July 1, 1996 as a result of Heller First Capital providing satisfactory proof of a loan commitment. Although Heller had conditionally agreed to provide financing for the project, Bundox was able to obtain more favorable financing terms from MOCD. As a condition to providing the financing, MOCD requested the Port to consent to the encumbrance of the Lease. As well, the Reaffirmation was modified to delete provisions that were previously negotiated to suit the requirements of prior potential lenders. This amendment does not add any new provisions that had not been previously approved by the Port Commission and Board of Supervisors. Its purpose is to remove Heller as lender and consent to MOCD as lender, and to make non-substantial clerical corrections to the previous Reaffirmation and Amendment.
Date of Amendment:	November 13, 1996
Port Commission Approval:	Resolution No. 96-117 November 12, 1996
Financing and Encumbrance:	Approval of MOCD as lender and Consent to the encumbrance of Bundox's Leasehold by a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor MOCD, with a note not to exceed $3.25 Million.
Security Interests of Lender:	Substantially the same as provided for above.

AMENDMENT NO. 3 TO LEASE

Background:	Construction of the Waterfront Restaurant redevelopment project commenced May 1, 1997.
Date of Amendment:	July 22, 1997
Port Commission Approval:	Resolution No. 97-70 July 22, 1997
Minimum Base Rent:	Bundox requested an amendment to the Lease to provide that Minimum Base Rent of $5,000/mo during the construction period be allowed in the event Bundox kept the restaurant open during construction. Bundox wanted to keep the restaurant open during construction to retain employees and customers, but requested lower minimum rent due to limited sales volume expected in conjunction with relatively high operating costs.
Premises:	Restaurant: 11,184 s.f.; Parking: 4,153 s.f.; Outdoor Patio/Public Access: 6,608 s.f.
Premises/BCDC Public Access Improvements:	BCDC required that public access improvements be made in areas adjacent to Bundox premises resulting in modifications in the size and location of public access improvements
Tenant Improvements:	Phase II Improvements were modified to delete the construction of replacement pier and modification of the public access walkway along the waters' edge.

BUNDOX (WATERFRONT RESTAURANT LEASE AMENDMENT COMPARISON

ORIGINAL LEASE L-11859

Background:	Bundox had been a tenant at Pier 7/1/2 since 1969. Bundox Requested a new lease with a proposed business plan for restaurant renovation and expansion requiring significant capital investment.
Date of Lease:	December 20, 1994.
Port Commission Approval:	Resolution No. 94-133 October 25, 1994
Board of Supervisor Approval:	Resolution No: 1035-94 File No: 65-94-17 Ordinance No. 412-94 December 19, 1994
Premises:	Restaurant: 9,650 s.f.; Parking: 2,828 s.f.; Outdoor Patio/Public Access: 8,668 s.f.
Lease Term:	20 Years, to Commence as of "Commencement Date" or by 7/30/92, or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms, and (v) receipt of Port Building Permit for Phase I.
Percentage Rent:	7% of Gross Receipts
Minimum Base Rent:	$5,000/mo until Phase I TI's done during time restaurant closed and under construction for a maximum of 9 months; then $17,500/mo, with CPI increase every 3 years.

Tenant Improvements:	Per Plant Construction Preliminary Construction Estimate, September 10, 1993, partially modified March 23, 1994. Note this estimate did not include other costs associated with the overall renovation, such as furniture, fixtures, and equipment, as well as additional soft costs. Phase I Improvements: Budget: $1.875 Million. Building area expansion and improvements to the second floor of the building Phase II Improvements: Budget $1.055 Million. Outside of building. Demolition of finger pier and construction of replacement pier; construction of two outdoor eating areas, one valet parking area, and new public access walkway along water.
Rent Credits from Port:	Allowable at 50% of Certified Costs by Waterfront: Phase I: Maximum Rent Credits, $1 million Phase II: Maximum $700,000; Rent Credits returned to Waterfront at rate of 40% of the Percentage Rent due to Port in excess of Minimum Base Rent.
Financing:	None described in lease. However, Commencement Date contingent on Waterfront obtaining financing of TI's at commercially reasonable terms for Phase I improvements.
Other:	Affirmative Action Plan required per lease.
Comments:	Lease was Void as Waterfront did not fulfill requirement for Lease Commencement. Commercially reasonable financing for TI's not obtained, therefore no building permit was issued by the Port. However, Waterfront was still in possession and continued to pursue financing.

REAFFIRMATION AND AMEND. TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	Once Lease became Void as of 7/1/95, Bundox asked the Port to reaffirm the Lease, extend the time for Bundox to obtain financing until June 30, 1996, to include certain modifications to the Lease and to consent to encumbrance of the leasehold by Bundox's proposed lenders. In early 1996, Bundox entered into negotiations for financing with Bank of America and the Small Business Administration. In June 1996, Bundox's negotiations with B of A and SBA stalled and Bundox entered into negotiations with Heller First Capital. The Reaffirmation was modified to replace BofA and SBA with Heller First Capital and the SF Mayor's Office of Community Development (MOCD). Heller provided the Port with satisfactory proof of a loan commitment to satisfy the Lease condition and the Lease went into effect July 1, 1996.
Date of Amendment:	June 28,1996
Port Commission Approval:	Resolution No: 96-15 February 27, 1996
Board of Supervisor Approval:	File No: 65-96-10 Ordinance No: 261-96 June 24, 1996
Lease Term:	Commencement Date or June 30, 1996, or Lease is Void. Term up to 22 years if Phase I/II done at same time; Term of 20 years at completion of Phase I TI's or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms as evidenced by a commitment letter of loan authorization issued by a qualified lender.
Financing:	Preliminary Approval of Heller First Capital ("Heller") and the MOCD as approved "Lenders".

Encumbrance:	Consent to the encumbrance of Bundox's Leasehold by lenders through a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor of both Heller, for a note not to exceed $1.25 Million, and MOCD, with a note not to exceed $2.0 Million.
Lease Amendments regarding Security Interests of Lender:	If Lease terminates for any reason or is rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, lender has the right to enter into a new lease on the same terms and conditions if they have remedied any monetary defaults; Lenders can assign the lease without the Port's consent in connection with lender's security documents if such assignment is by judicial or non-judicial foreclosure or deed in lieu of foreclosure, and any other assignments to a third party at a foreclosure sale must be approved by the Port; Lenders must consent to any voluntary surrender of the Lease; disposition of any insurance proceeds in case of loss, any eminent domain or condemnation awards or damages payable under the lease shall be first made to lenders as to their deeds of trust, and the Port waives the right to obtain a lien on any thing that may constitute a part of the fixtures on the Premises during the term of the loans.

AMENDMENT NO. 2 TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	The lease went into effect on July 1, 1996 as a result of Heller First Capital providing satisfactory proof of a loan commitment. Although Heller had conditionally agreed to provide financing for the project, Bundox was able to obtain more favorable financing terms from MOCD. As a condition to providing the financing, MOCD requested the Port to consent to the encumbrance of the Lease. As well, the Reaffirmation was modified to delete provisions that were previously negotiated to suit the requirements of prior potential lenders. This amendment does not add any new provisions that had not been previously approved by the Port Commission and Board of Supervisors. Its purpose is to remove Heller as lender and consent to MOCD as lender, and to make non-substantial clerical corrections to the previous Reaffirmation and Amendment.
Date of Amendment:	November 13, 1996
Port Commission Approval:	Resolution No. 96-117 November 12, 1996
Financing and Encumbrance:	Approval of MOCD as lender and Consent to the encumbrance of Bundox's Leasehold by a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor MOCD, with a note not to exceed $3.25 Million.
Security Interests of Lender:	Substantially the same as provided for above.

AMENDMENT NO. 3 TO LEASE

Background:	Construction of the Waterfront Restaurant redevelopment project commenced May 1, 1997.
Date of Amendment:	July 22, 1997
Port Commission Approval:	Resolution No. 97-70 July 22, 1997
Minimum Base Rent:	Bundox requested an amendment to the Lease to provide that Minimum Base Rent of $5,000/mo during the construction period be allowed in the event Bundox kept the restaurant open during construction. Bundox wanted to keep the restaurant open during construction to retain employees and customers, but requested lower minimum rent due to limited sales volume expected in conjunction with relatively high operating costs.
Premises:	Restaurant: 11,184 s.f.; Parking: 4,153 s.f.; Outdoor Patio/Public Access: 6,608 s.f.
Premises/BCDC Public Access Improvements:	BCDC required that public access improvements be made in areas adjacent to Bundox premises resulting in modifications in the size and location of public access improvements
Tenant Improvements:	Phase II Improvements were modified to delete the construction of replacement pier and modification of the public access walkway along the waters' edge.

MAYOR'S OFFICE OF COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO

WILLIE LEWIS BROWN, JR.
MAYOR

ROGER SANDERS
DIRECTOR

DATE: March 25, 2003

TO: Leanne Nhan, Budget Analyst

FROM: Al Lerma, Program Director

RE: Bundox, Inc. dba The Waterfront Restaurant

Below are responses to your questions regarding Bundox, Inc. dba The Waterfront Restaurant –

1. Why did Bundox Restaurant, Inc. qualify for an MOCD loan?

   After the Loma Prieta quake in 1989 and the collapse of the freeway along the Embarcadero the Port and the City began an effort to revitalize the San Francisco waterfront to expand business, tourism and recreational opportunities. The Waterfront Restaurant has been located along the Embarcadero for 31 years. The business had an opportunity to renovate and expand their restaurant with support from the Port of San Francisco and the MOCD. The Section 108 loan program as described below was an economic development loan program intended to support such efforts to revitalize and expand business opportunities in areas targeted for development such as the Embarcadero corridor.

   The request from The Waterfront Restaurant at the time represented an opportunity to help launch revitalization efforts along the Embarcadero and to encourage other businesses to invest along the Embarcadero. The project provided an opportunity to create and retain jobs and to improve and expand the business at its existing location. Since then there have been a number of other improvements (Renovation of the Ferry Building, the Extension of the Muni Light Rail to Pier 39, and the opening of Pac Bell Park) that have helped to reshape and revitalize the San Francisco waterfront. The Waterfront loan request met all of the job creation and underwriting requirements at MOCD and was recommended for funding in late 1995 and an approved loan agreement was signed in November 1996.

2. What was the purpose of the loan?

The purpose of the HUD Section 108 business loan was to pay for the following uses for The Waterfront Restaurant renovation project:

Leasehold improvements	$ 2,347,248
Furniture, Fixtures & Equipment	$ 485,000
Interest Reserve	$ 170,000
Debt Repayment	$ 200,000
Working Capital	$ 47.752
	$ 3,250,000

3. Describe the MOCD loan program?

San Francisco Mayor's Office of Community Development offers three loan programs to stimulate economic development and assist small businesses. These loan programs are distinguished primarily by loan size.

- **Micro-Enterprise Revolving Loan Program** - providing loans up to $25,000 to support micro-enterprise and self employment efforts of low and moderate income San Franciscans interested in starting or expanding their own small businesses. A Micro-enterprise is defined as a business that has five or less employees. Applicants should demonstrate experience in the business for which the loan is requested and exhibit a source of repayment of the loan.

- **Small Business Revolving Loan Fund** - providing existing small businesses with loans up to $100,000* (loans may exceed this amount if business demonstrates significant economic impact) which can be used for a number of purposes, including working capital, equipment purchase, and other business expansion activities.

- **Section 108 Loan Program** - for loans exceeding $100,000 to businesses identified as consistent with and supporting specific economic development initiatives of the City. The primary strategy of the Section 108 economic development program is to support the goals of the City's overall economic development efforts. These efforts include:

  a.) reducing unemployment and under-employment through job training and expansion of employment and job opportunities;
  b.) maintaining a vital, balanced and diversified economic base that provides job opportunities for a highly diverse labor force;

The Bundox dba The Waterfront Restaurant loan was made under the Section 108 loan program. The Section 108 Loan Program is funded by funds from the US Department of Housing & Urban Development (US-HUD).

4. **What was the loan payment schedule under the 9 percent interest rate, and under the 6 percent interest rate?**

   Original Loan Payment Terms:
   Loan Amount: $ 3,250,000
   Interest Rate: 9%
   Term: 17 Years
   Monthly Payment: $ 31,161

   Proposed Revised Loan Terms:
   Interest Rate: 6%
   Term: Extended through Feb. 2025 to coincide with SF Port proposed lease term
   Monthly Payment: $ 22,429

   The MOCD is working with a business consultant from the SF Small Business Development Center to provide technical assistance to The Waterfront Restaurant during this downturn in our local and national economy. The revised loan terms are based on a detailed review of The Waterfront's business operations by this office with the goal of providing some recommendations to improve and strengthen the business operations of The Waterfront Restaurant going forward. This will help to preserve a long time San Francisco business as well as the approximately 89 jobs of its employees.

5. **Is the business required to be audited or required to produce audited financial statements under the loan? If so, what where the results?**

   The Bundox, Inc. provides annual year end business tax returns to MOCD which are reviewed by our staff. In addition, periodic financial statements are provided and reviewed as requested. The business also provides to MOCD copies of the State of California Board of Equalization audit done every two years under California Sales and Use Tax Law.

   During the audit term from 4/1/96 – 03/31/99 the business was required to pay $ 30,819 in taxes under a settlement agreement related to revisions in the tax law at the time regarding gratuities charged by restaurants. The business appealed the determination but was unsuccessful and was required to pay the back taxes. As a result The Waterfront Restaurant revised their internal policy to assess the appropriate taxes on gratuities to comply with the Board of Equalization audit findings.

   During the audit term from 7/1/99 – 6/30/02 no significant findings were identified by the Board of Equalization's audit review for Bundox, Inc. dba The Waterfront Restaurant.

   Bundox, Inc. has experienced a significant decline in revenue since the year 2001 and has been unable to meet the debt service on their MOCD loan since October 2001. While they are delinquent on their loan payments, Bundox, Inc. has been working closely with a restaurant consultant provided by MOCD through the Small Business Development Center. The consultant is assisting Bundox, Inc. in identifying ways to cut costs and generate additional revenues during this downturn in the economy. Bundox, Inc. relies

heavily on the tourist trade and convention business to generate revenues, both of which have suffered significantly in the post 9/11 marketplace.

We expect that with the restructuring of the current loan terms along with the ongoing technical assistance support of the Small Business Development Center, that the Bundox, Inc. will be able to restart making their loan payments.

Attached are the following documents for Bundox, Inc.

- A copy of 2001 Tax Return (fiscal year runs from March to February)
- A copy of an interim P&L/Balance Sheet (from March 2002 to December 2002 – 10 Mos.)

MAYOR'S OFFICE OF COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO

WILLIE LEWIS BROWN, JR.
MAYOR

ROGER SANDERS
DIRECTOR

DATE: March 25, 2003

TO: Leanne Nhan, Budget Analyst

FROM: Al Lerma, Program Director

RE: Bundox, Inc. dba The Waterfront Restaurant

1. Please describe how the loan is secured?

The loan is secured by a leasehold deed of trust on the property. We also have a UCC-1 (Uniform Commercial Code-1 Financing Statement) filed on the business assets (furniture, fixtures & equipment) with the Secretary of State's office. In addition, we have personal guarantees from Al & Cheryl Falchi.

2. Explain in detail what will occur if the borrower defaults.

If the borrower defaults and the business is unable to continue, MOCD would work with the Port to put the lease on the market in order to solicit a new tenant to buy out our interest. In the meanwhile, MOCD would have to pay rent to the Port in order to keep the lease in good standing. With the economy in a recession MOCD would likely only recoup a fraction of the outstanding loan balance by selling the leasehold interest. In addition, a going out of business sale for the furniture, fixtures & equipment would likewise only generate a fraction of the original value of the equipment since so many restaurants have closed in the past year and there is a lot of restaurant equipment available at bargain prices.

At the moment we could stand to lose not only approximately 85-90 local jobs but also the adverse consequences of having a defaulted loan on our books. Since MOCD borrowed these funds from HUD through the Section 108 Loan Program, we must continue to make loan payments to HUD for the outstanding loan balance. In addition, the opportunity costs of a defaulted loan of this size would result in MOCD funding less community programs with funds that would instead have to be used to pay back the remaining loan balance to HUD. As you can see this would have a serious impact on funding for our community development programs.

The source of funds for these costs in the event of a loan default would be primarily from two areas. The first source would be the program income generated from other active loans in our

portfolio. The second source would be the annual CDBG grant that CCSF receives from HUD each year.

Program income from our revolving loan funds goes toward making new loans to small businesses in San Francisco. Funds from our annual CDBG Grant are used to fund a broad spectrum of services for low-to-moderate income San Franciscans. As mentioned previously, funds used to repay a defaulted loan would have an adverse impact on the program services currently funded by this office.

These are the primary reasons why it makes more sense to assist the Waterfront in the near term to stay in business and continue to service their lease and their loan payments with this office. As the economy improves in the future, it would further strengthen our collateral position and result in a positive future for the business.

3. List all changes being made to the original Loan Agreement. Is there a cost to these changes?

The changes in this loan amendment include a reduction in the interest rate from 9% to 6% and an extension of the current loan term from Feb. 2012 to Feb. 2025. The term extension was intended to correspond with the Port lease extension. There may be some additional minor adjustments as we finalize a workable amortization schedule. However, these will be done within the above stated terms.

There are no additional costs to MOCD for making the proposed changes to the loan agreement. Under these revised terms MOCD would expect to recover both the loan principal balance plus interest over the life of the loan.

4. Why did the MOCD Section 108 Loan to Bundox not require Board of Supervisors approval?

MOCD did receive Board of Supervisors approval in Resolution 67-96 (File No. 68-95-5.1) to accept and expend Section 108 Revolving Loan Guarantee Funds for this program in accordance with the federal rules and regulations of the program. In doing so the Mayor's office accepted the administrative responsibility for the Section 108 Revolving Loan Guarantee funds in accordance with federal rules and regulations. The administration of the Section 108 Loan Program by the Mayor's Office includes loan application review, loan underwriting, loan amendments or workouts, loan servicing, loan collections and all other aspects of revolving loan fund administration.

5. How much has been paid by Bundox, Restaurant, Inc. to date?

- I am revising the expenditures breakdown from my previous memo, loan funds were used for the following:

Leasehold improvements	$ 2,489,600.73
Furniture, Fixtures & Equipment	$ 451,126.91
Interest Reserve	$ 146,250.00
Working Capital	$ 163,022.36
	$ 3,250,000.00

- To see how much Bundox, Inc. had paid to-date and to see the fiscal impact to MOCD & City see table below:

MOCD: BUNDOX, INC. LOAN TERM COMPARISON

	Original Loan Terms	Proposed Revised Loan Terms
Loan Amount	$3,250,000.00	(See **Note below) $3,283,597.77
Interest Rate	9 percent	6 percent
Monthly Payment	$31,161.00	$22,429.42
Term	Yrs. 1996 - 2012	Yrs. 2003 - 2025
Interest Paid To-date	$1,248,787.46	$1,248,787.46
Principal Paid To-date	$317,579.49	$317,579.49
Sub-total Paid To-date	$1,566,366.95	$1,566,366.95
Projected P&I over the life of the loan	$6,356,869.88 (Already includes P&I Paid To-date)	$5,921,366.19 (Plus P & I Paid To-date) $1,566,366.95
Total P & I over loan term	$6,356,869.88	$7,487,733.14

****Note: The revised loan amount of $ 3,283,597.77 above includes the following:**

Current Loan Principle Balance	$2,932,420.49
Past Due Interest	$351,177.28
Revised Loan Principle Balance	$3,283,597.77

A copy of the proposed loan amendment is attached under separate cover.

Cc: Roger Sanders, Director

Item 7 - File 03-0619

Note: This item was continued by the Finance and Audits Committee at its meeting of April 30, 2003.

Department: Airport
Airfield Development Bureau (ADB)

Item: Hearing to consider release of $3,767,000 held in reserve for the Airfield Development Bureau for FY 2002-2003.

Amount: $3,767,000 (see Comment Nos. 2 and 3)

Source of Funds: See Attachment No. I provided by the Airport.

Description: On July 1, 2003, the Board of Supervisors approved Ordinance 159-02 (File No. 02-1068) rescinding $1,087,448,058 of unencumbered and unexpended funds previously appropriated for unspecified Airport Capital Improvement Projects and reappropriated $546,658,755 of the $1,087,448,058 for specific Capital Improvement Projects. Of the total $546,658,755 reappropriation, the Board of Supervisors appropriated $11,235,148 for the FY 2002-2003 Airfield Development Bureau – Runway Reconfiguration Project budget, reserving $5,000,000 of the $11,235,148 and releasing $6,235,148.

The Airport is requesting the release of $3,767,000 of the previously reserved $5,000,000 for the remainder of FY 2002-2003 to continue the Airfield Development Bureau – Runway Reconfiguration Project work pertaining to (a) the Federal Environmental Impact Statement (EIS), and (b) the State of California Environmental Impact Report (EIR) required for the Runway Reconfiguration Project.

Budget: A summary FY 2002-2003 budget for the Airport's Airfield Development Bureau Runway Reconfiguration Project is shown in the following table:

	A	B	C	D	E	F
Title / Contractor	Original FY 2002-2003 Project Appropriation	FY 2002-2003 Funding Previously Released by the Board of Supervisors	Expenditure as of 04/03/03	Total Projected Expenditure as of 06/30/03	Balance of Reserved Funds Needed [Col. D – Col. B]	Excess of Budgeted Funds over Projected Expenditures as of 06/30/03 [Col. A – Col. D]
ADB Staff:						
Salaries	$1,277,987	$874,507	$783,207	$1,166,667	$292,160	$111,320
Pay for performance & mandatory fringe benefits	230,589	179,116	160,416	238,956	59,840	(8,367)
Subtotal:	$1,508,576	$1,053,623	$943,623	$1,405,623	$352,000	$102,953
Contractors:						
Howard, Needles, Tammen & Bergendorff (HNTB)	$0	300,000	$175,260	$250,260	$(49,740)	$(250,260)
Harris, Miller, Miller, and Hanson, Inc. (HMMH)	200,000	0	0	300,000	300,000	(100,000)
URS Corporation	3,600,730	2,030,353	2,018,010	3,800,000	1,769,647	(199,270)
Wildlands, Inc. (option agreement)	408,000	260,000	225,755	450,655	190,655	(42,655)
National Oceanic & Atmospheric Agency	69,000	119,000	49,000	199,000	80,000	(130,000)
DMC Airfield Engineers	574,718	450,000	347,350	547,350	97,350	27,368
Regional Water Quality Control Board (memorandum of understanding)	0	0	0	125,000	125,000	(125,000)
Other contractors (listed in Attachment II, provided by the Airport)	4,874,124	2,022,172	755,885	2,184,385	162,213	2,689,739
Subtotal:	$9,726,572	$5,181,525	$3,571,260	$7,856,650	$2,675,125	$1,869,922
Subtotal:	$11,235,148	$6,235,148	$4,514,883	$9,262,273	$3,027,125	$1,972,875

The above table contains the following budget and expenditure information broken down by total personnel and total contract costs:

- Original FY 2002-2003 project appropriation of $11,235,148.
- FY 2002-2003 funding released by the Board of Supervisors in the amount of $6,235,148.
- FY 2002-2003 actual expenditures in the amount of $4,514,883 as of April 3, 2003.
- Projected FY 2002-2003 expenditures in the amount of $9,262,273 as of June 30, 2003.
- Subject requested release of reserved funds in the reduced amount of $3,027,125 which, based on the Budget Analyst's review, is $739,875 less than the Airfield Development Bureau's request to the Finance and Audits Committee of $3,767,000 (see Comment Nos. 2 and 3).
- The amount of $1,972,875 which is the excess of the FY 2002-2003 budgeted funds of $11,235,148 over the projected FY 2002-2003 expenditures of $9,262,273 as of June 30, 2003.

Comments:

FY 2002-2003 Expenditures to Date

1. As shown in the above table, the Airfield Development Bureau had expended $4,514,883 of its FY 2002-2003 budget as of April 3, 2003, or approximately 40.2 percent of the total $11,235,148 project appropriation for FY 2002-2003. Ms. Debra Ward of the Airfield Development Bureau advises that none of the $5,000,000 in previously reserved funds has been expended to date.

2. By June 30, 2003, the Airfield Development Bureau projects total expenditures of $9,262,273, or $1,972,875 less than the total FY 2002-2003 budget of $11,235,148. The Board of Supervisors has previously authorized expenditures of $6,235,148. Therefore, Board of Supervisors authorization is now required for the remaining need of $3,027,125 (total projected expenditures of $9,262,273, less $6,235,148 previously released by the Board of Supervisors). As previously noted, the remaining need of $3,027,125 is $739,875 less

than the Airport's request for the release of reserved funds in the amount of $3,767,000.

3. Therefore, the Budget Analyst recommends that the proposed release of reserved funds be reduced by $739,875, from $3,767,000 to $3,027,125.

<u>URS Corporation Contract</u>

4. The Airfield Development Bureau justified part of its request for release of reserved funds for the URS Corporation, on the basis of hours of additional work required. In response to the Budget Analyst's request for further information, according to Mr. Ivar Satero of the Airport, the actual expenditures shown in the table above of $2,018,010 as of April 3, 2003 represent contractor invoices submitted through January 10, 2003 that were paid as of April 3, 2003, Mr. Satero has submitted documentation that additional unpaid invoices amounting to $1,032,687 have been submitted, but were not paid until April 30, 2003 according to Mr. Satero, and invoices through the remainder of FY 2002-2003 are projected to total an additional $760,000. Therefore, URS Corporation contract expenditures for FY 2002-2003 are projected to total $3,810,697 ($2,018,010 shown in the table above, an additional $1,032,687 through April 30, 2003 and a projected $760,000 from May 1 through June 30, 2003).

<u>Wildlands, Inc. Option Agreement</u>

5. During the Budget Analyst's pending management audit of the Airport's Airfield Development Bureau, the Budget Analyst has raised various questions pertaining to the Airport's option agreement with Wildlands, Inc. Under the terms of the option agreement between the Airport and Wildlands, Inc., the Airport is committed to paying Wildlands, Inc. (a) a monthly option payment of $33,980 one month in advance, and (b) a 60-day termination payment of two monthly payments, or $67,960. In FY 2002-2003 the Airport has already committed to paying Wildlands, Inc. 11 monthly option payments through May 30, 2003 for a total of $373,780 (11 times $33,980). Further, the Airport would have to pay a two-month termination payment of $67,960 even if

the Airport terminated the option agreement at the beginning of May. Therefore, the Airport is already required to make a minimum payment to Wildlands, Inc. of $441,740 ($373,780 plus $67,960) in FY 2002-2003, in addition to paying Wildlands Inc. the full requested release of reserved funds in the amount of $190,655 (see table above).

The Budget Analyst's finding on the Wildlands, Inc. option agreement will be presented in detail in his forthcoming management audit report to be submitted to the Board of Supervisors.

Regional Water Quality Control Board Memorandum of Understanding (MOU)

6. The Airport is currently negotiating a Memorandum Of Understanding with the Regional Water Quality Control Board (RWQCB) for the RWQCB to provide the Airport with the following scope of work at an estimated cost of $125,000:

- Review work plans, investigation reports, mitigation plans, and associated correspondence for the Airport, its consultants, and/or interested parties.
- Participate in meetings (including the Multi-Agency Task Force for the Runway Reconfiguration), make presentations, and hold discussions with interested parties about water quality impacts.
- Review (a) the proposals and technical analyses prepared for the draft EIR/EIS, (b) the draft EIR/EIS supporting documentation, (c) the recommendations presented to the Airfield Development Bureau by the National Oceanic and Atmospheric Agency Panel, (d) the analyses required under Section 404(b)(1) of the Clean Water Act, and (e) the mitigation plan.

Based on the Budget Analyst's inquiries, Ms. Ward advises that, based on approximately 1,560 hours of work, at an average hourly rate of $80.00, the original estimated cost for the RWQCB work was $125,000 (1,560 hours x $80.00 = $124,800). However, since the RWQCB will not commence its work until sometime in May of

2003, the estimated number of hours involved between May 1 and June 30, 2003 should be reduced by 920 hours, from 1,560 hours to 640 hours (640 hours represents two Contractor personnel performing work approximately 160 hours per month or a total of 320 billable hours per month, for two months). This reduction in hours results in a total need of $51,200 (640 hours x $80.00). Therefore, the requested release of reserved funds should be reduced by $73,800, from $125,000 to $51,200.

Attachments

7. Attachment I, a memorandum provided by Mr. Satero, describes the source of funds for the proposed release of reserved funds. As indicated in Attachment I, Mr. Satero states that the source of funds for the release of reserve are "unexpended bond funds appropriated for capital purposes".

8. Attachment II, also provided by Mr. Satero, provides contract details for the "Other Contractors" identified in the budget table on the second page of this report, for which the Airfield Development Bureau has requested a release of reserved funds in the amount of $162,213.

Recommendations:

1. In accordance with Comment Nos. 2 and 3, reduce the requested release of reserved funds by $739,875.

2. In accordance with Comment No. 6, reduce the requested release of reserved funds for the MOU with the RWQCB by $73,800 from $125,000 to $51,200.

3. Approval of the release of reserved funds in the amended amount of $2,953,325 ($3,767,000 requested less $739,875 under Recommendation No. 1 above, less $73,800 for the Memorandum Of Understanding with RWQCB under Recommendation No. 2 above) is a policy matter for the Board of Supervisors.

BOARD OF SUPERVISORS
BUDGET ANALYST

Harvey M. Rose

cc: Supervisor Peskin
Supervisor Sandoval
Supervisor McGoldrick
Clerk of the Board
Controller
Ben Rosenfield
Ted Lakey

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MEMORANDUM

TO: Budget Analysts' Office

FROM: Ivar Satero
Airport Development

DATE: May 1, 2003

PROJECT: File 03-0619

SUBJECT: Release of Reserve Funding Source

Regarding your question of what the source of funds are for the reserve release amount requested of $3,767,000, the Airport will use unexpended bond funds appropriated for capital purposes.

If you have any questions regarding on this information, please don't hesitate to call.

Attachment II

Expended Y-T-D Fiscal Year 2002-2003 for ADB
thru April 3, 2003
Detail of Other Contracts

Contract Number	Contract Name/Description	Original FY02-03 Budget	Funding Released	Expended Y-T-D	Project 4 Expend thru ~~6~~/30	Total Projected FY 2002-2003
4087.A	ADEC	$ -	$ -	$ 212,564	$ 300,000	$ 512,564
7000.3	Hopkins Sutter/Foley Lardner	$ 75,922	$ -	$ 11,168	$ 25,000	$ 36,168
7000.4	Remy Thomas & Moose	$ 300,000	$ 300,000	$ 252,738	$ 100,000	$ 352,738
7011.5	BCDC	$ 125,000	$ 125,000	$ 125,000	$ -	$ 125,000
7000 17	O'Melvaney	$ 70,000	$ -			
7000.12	Steefel Levits and Weiss	$ 78,134	$ -	$ 68	$ -	$ 68
7032.1	Bay Relations	$ 90,000	$ -	$ 758	$ -	$ 758
7013.3	Jones & Stokes	$ 650,000	$ 300,000	$ 97,655	$ 300,000	$ 397,655
7022.1	FAA Tower Citing Study	$ 26,260	$ -	$ 770	$ -	$ 770
7000.13A	Morrison & Foerster	$ 180,000	$ 180,000	$ 52,645	$ 100,000	$ 152,645
7000.24	EIR Printing	$ 600,000	$ 300,000	$ 2,519	$ 20,000	$ 22,519
7023.1	State Lands Commission	$ 75,000	$ -			
7018.11-.14	Public Outreach	$ 300,000	$ -	$ -	$ -	$ -
7000.18	City Attorney Work Order	$ 403,500	$ 403,500	$ -	$ 403,500	$ 403,500
XFER	City Planning Work Order	$ 175,000	$ 174,670	$ -	$ 180,000	$ 180,000
TBD	Environmental Consultants	$ 600,839	$ 200,000	$ -	$ -	$ -
TBD	Additional Planning Consultant	$ 187,394	$ 22,000	$ -	$ -	$ -
TBD	Communications Consultants	$ 104,160	$ -	$ -	$ -	$ -
TBD	EIR Grafics Assistance	$ 220,000	$ 15,000	$ -	$ -	$ -
TBD	ELO	$ 90,000	$ -	$ -	$ -	$ -
TBD	Luster/GKO	$ 522,914	$ -	$ -	$ -	$ -
						$ -
	Totals	**$ 4,874,123**	**$ 2,020,170**	**$ 755,885**	**$ 1,428,500**	**$ 2,184,385**

BOARD of SUPERVISORS

Dr. Carlto
San

TDD/TTY No. 544-5227

NOTICE OF CANCELLED MEETING

FINANCE AND AUDITS COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN that the meeting of the Finance and Audits Committee scheduled for Wednesday, May 14, 2003 at 12:30 p.m., at 1 Dr. Carlton B. Goodlett Place, Room 263, City Hall, San Francisco, California, has been **cancelled**.

Gloria L. Young, Clerk of the Board

City and County of San Francisco
Meeting Minutes
Finance and Audits Committee

Members: Aaron Peskin, Gerardo Sandoval and Jake McGoldrick

Clerk: Linda Laws

Wednesday, May 21, 2003 | **12:30 PM** | **City Hall, Room 263**

Regular Meeting

Members Present: Aaron Peskin, Jake McGoldrick.

Members Absent: Gerardo Sandoval.

MEETING CONVENED

The meeting convened at 12:43 p.m.

CONSENT AGENDA

All matters listed hereunder constitute a Consent Agenda, are considered to be routine and will be acted upon by a single roll call vote of the Committee. There will be no separate discussion of these items unless a member of the Committee or the public so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.

030345 [Acceptance of Gift]
Resolution accepting a gift of $55,000 from the Market Street Railway and authorizing said funds to be expended for the purchase of Historic Streetcar #162 from the Orange Empire Railway Museum. (Municipal Transportation Agency)

(No Public Benefit Recipient.)
4/21/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

RECOMMENDED..

The foregoing items were acted upon by the following vote:
Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

REGULAR AGENDA

030653 **[Mayor's Summer Food Service Program]**

Resolution authorizing the Department of Children, Youth and Their Families to accept and expend a grant in the amount of $485,794 from the United States Department of Agriculture for Mayor's Summer Food Service Program. (Mayor)

(No Public Benefit Recipient.)

4/18/03, RECEIVED AND ASSIGNED to Finance and Audits Committee. Department requests this item be calendared at the April 30, 2003 meeting.

Supervisor Peskin requested this item be severed so it could be considered separately.

SEVERED FROM COMMITTEE CONSENT AGENDA.

Heard in Committee. Speakers: Camille Wise, Department of Children, Youth and Their Families; Harvey Rose, Budget Analyst; John Kennedy, Deputy City Attorney; Richard Robinson, CATS.
5/19/03 Amended on page 1 as follows: On line 4, by replacing "$485,794" with "$420,350"; on line 18, by replacing "$485,794" with "$420,350".

AMENDED.

Resolution authorizing the Department of Children, Youth and Their Families to accept and expend a grant in the amount of $420,350 from the United States Department of Agriculture for Mayor's Summer Food Service Program. (Mayor)

(No Public Benefit Recipient.)

RECOMMENDED AS AMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030631 **[Competitive Bid and Prevailing Wage Exemption for Job Training Program - San Francisco Conservation Corps]**

Supervisor Maxwell

Ordinance exempting the San Francisco Conservation Corps from the prevailing wage requirements and waiving the competitive bid requirements for the Recreation and Park Commission's award of a contract for construction of playgrounds, restoration of natural areas and implementation of erosion control measures in San Francisco parks.

4/15/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/23/03, REFERRED TO DEPARTMENT. Transmitted to Small Business Commission for review and recommendation.

Heard in Committee. Speakers: Marti Paschal, Aide to Supervisor Maxwell; Elizabeth Goldstein, Recreation and Park Department; Ann Cochran, Luis Guiterrez, and Tamika Cato, SF Conservation Corps; Bill Wong, Carpenters Union Local 22; Female Speaker, Trust for Public Land; Eliza Siska, SF Housing Authority.
5/19/03 Amended on page 1 as follows: On line 19, by replacing "four and one-half" with "five"; on line 25, by replacing "four and one-half" with "five".

AMENDED.

RECOMMENDED AS AMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030742 [Appropriation, $1,600,000 - Department of Elections]

Supervisor Gonzalez

Ordinance appropriating funding not to exceed $1,500,000 from the General Fund Reserve for professional services to implement a ranked-choice voting system for the Department of Elections for fiscal year 2002-03.

4/29/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Supervisor Gonzalez; John Arntz, Department of Elections; Robert Bryant, Deputy City Attorney; Monique Zmuda, Controllers Office; Harvey Rose, Budget Analyst; James Bryant. 5/21/03 Amendment of the Whole bearing new title prepared in Committee.

AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE.

Ordinance appropriating funding not to exceed $1,600,000 from the General Fund Reserve for professional services to implement a ranked-choice voting system for the Department of Elections for fiscal year 2002-03.

Continued to 6/4/03.

CONTINUED AS AMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030527 [Reserved Funds, Recreation and Park Department]

Hearing to consider release of reserved funds, Recreation and Park Department (fiscal year 2000-2001 budget), in the amount of $1,087,131 to enable the department to manage, design and construct park and recreation facilities anticipated in the Department's Capital Plan. (Recreation and Park Department)

4/8/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/30/03, CONTINUED. Heard in Committee. Speaker: Gary Hoy, Recreation and Park Department.
Continued to 5/21/03.

Heard in Committee. Speakers: Elizabeth Goldstein and Gary Hoy, Recreation and Park Department. Continued to 6/4/03.

CONTINUED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030400 [Approval of Lease Amendment for Waterfront Restaurant]

Resolution approving Fourth Lease Amendment to Port Lease No. L-11859 between the Port Commission and Bundox Restaurant, Inc., a California corporation ("Tenant") for the lease of real property commonly known as the Waterfront Restaurant. (Port)

(Public Benefit Recipient.)

3/12/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/30/03, CONTINUED. Heard in Committee. Speakers: Harvey Rose, Budget Analyst; Ted Lakey, Deputy City Attorney; Kenneth Winters, Port; Mary Murphy, attorney for Bundox Restaurant.
Continued to 5/7/03.

5/7/03, CONTINUED. Speakers: None.
Continued to 5/21/03.

Speakers: None.
Continued to 6/4/03.

CONTINUED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030781 **[Reserved Funds, Municipal Transportation Agency]**

Hearing to consider release of reserved funds, Municipal Transportation Agency (File No. 011272, Resolution No. 658-01), in the amount $12,381,055 to fund the Muni Railway Contract No. CS-132, for the Third Street Light Rail Transit Project. (Municipal Transportation Agency)

5/5/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speaker: Harvey Rose, Budget Analyst.
Release of reserved funds in the amount of $12,381,055 approved.

APPROVED AND FILED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030609 **[Appropriate funding from the sale of certificates of participation for the Juvenile Hall Reconstruction Project]**

Mayor

Ordinance appropriating $45,000,000 from the sale of certificates of participation by the Mayor's Office of Criminal Justice to fund the Juvenile Hall Reconstruction Project for fiscal year 2002-03, placing $545,000 on reserve. (Mayor)

4/15/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Harvey Rose, Budget Analyst; Jesse E. Williams, Jr., Chief Probation Officer.
5/21/03 Amendment of the Whole bearing new title prepared in Committee.

AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE.

Ordinance appropriating $42,052,080 from the sale of certificates of participation by the Mayor's Office of Criminal Justice to fund the Juvenile Hall Reconstruction Project for fiscal year 2002-03. (Mayor)

RECOMMENDED AS AMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030683 **[Funding for the over-expenditures in the Conflicts Panel (Indigent Defense) Program]**

Mayor

Ordinance appropriating $150,000 in the Child Support Services Fund and $1,050,000 from the General Fund Reserve for a total of $1,200,000 to cover over-expenditures in legal expenses associated with the Conflicts Panel (Indigent Defense) Program consisting of $500,000 carried forward from FY 2001-02 and $700,000 of FY 2002-03 for the Superior Court for fiscal year 2002-03. (Mayor)

(Fiscal impact.)

4/22/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Commitee. Speakers: Gordon Park Li, Superior Court; Stephen Kauss, Bar Association; Harvey Rose, Budget Analyst; Kieu-Anh Hing, Mayor's Budget Office; Jeff Adachi, Public Defender; Monique Zmuda, Controller's Office.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030730 **[Sale of Assessor's Block 3740, Lot 27 to Redevelopment Agency for $10,034,140]**

Resolution approving the sale of real property commonly known as Assessor's Block 3740, Lot 27 (consisting of approximately 34,057 square feet and located along the west side of Spear Street between Folsom and Howard Streets) to the San Francisco Redevelopment Agency for $10,034,140. (Mayor)

(Public Benefit Recipient.)

4/29/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Steve Legnitto, Department of Administrative Services; Tina Olson, Department of Public Works; Joanne Sakai, SF Redevelopment Agency.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030752 **[Purchase of Real Property at 1298 Ocean Avenue for the Public Library]**

Supervisor Sandoval

Resolution authorizing the execution and performance of an Agreement of Purchase and Sale for Real Estate between the City and County of San Francisco and George Yasbek, a single man (the "Seller"), for the purchase of real property and improvements located at 1298 Ocean Avenue, San Francisco, for use as the Ingleside Branch Library of the San Francisco Public Library; adopting findings under the California Environmental Quality Act; and adopting the findings that the conveyance is consistent with the City's General Plan and Eight Priority Policies of City Planning Code Section 101.1.

(Public Benefit Recipient.)

4/29/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Steve Legnitto, Department of Administrative Services; Susan Hildreth, SF Public Library; Charlie Dunn, Department of Administrative Services; Betty Landis; Regina Blosser. The Mayor's Office was removed as requester and Supervisor Sandoval requested to be added as sponsor.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030577 **[Parental Leave]**

Supervisor Daly

Ordinance approving rules for administration, interpretation and regulation of Parental Leave as submitted by the Department of Human Resources.

(Fiscal impact.)

4/8/03, RECEIVED AND ASSIGNED to Finance and Audits Committee

Heard in Committee. Speakers: Bill Barnes, Aide to Supervisor Daly; Geoffrey Rothman, Department of Human Resources; Monique Zmuda, Controller's Office; Harvey Rose, Budget Analyst.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030634 **[Proposed layoffs of cashiers and locker room attendants]**

Supervisor Ammiano

Hearing to consider proposed layoffs of cashiers and locker room attendants who work at City's pools.

4/15/03, RECEIVED AND ASSIGNED to Budget Committee.

5/7/03, TRANSFERRED to Finance and Audits Committee.

Heard in Committee. Speakers: Supervisor Ammiano; Elizabeth Goldstein, Recreation and Park Department; John Murray, Recreation and Park Commission; Chuck Lowden, Recreation and Park Department; Terrell Kouther, Recreation and Park Department; Diana Waggner; Denise Kouther-Graham, Recreation and Park Department.

FILED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030342 **[Accept and Expend Federal Grant Funds Under the Airport Improvement Program (AIP)]**

Resolution authorizing the Airport Commission to accept and expend grant funds in a total amount of $26,759,043 from the Federal Aviation Administration, and any subsequent amendments offered by the Federal Aviation Administration: $24,259,043 to be expended on standard Airport improvements (A.I.P 23, Project No. 3-06-0221-23); and $2,500,000 for Airport security improvements (A.I.P 24, Project No. 3-06-0221-24). (Airport Commission)

(Public Benefit Recipient.)

2/28/03, RECEIVED AND ASSIGNED to Finance and Audits Committee. Department requests this item be calendared as soon as possible.

Heard in Committee. Speaker: Cathy Widener, Airport Commission.
5/21/03 Amend page 2 line 5, after "consist" add "solely".

AMENDED.

RECOMMENDED AS AMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030619 **[Release of reserved funds, Airfield Development Bureau]**

Supervisor Dufty

Motion for hearing regarding release of $3.7 million held in reserve of the Airfield Development Bureau budget allocation for Fiscal Year 2002-03.

4/15/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/30/03, CONTINUED Heard in Committee. Speakers: Male Speaker; Ted Lakey, Deputy City Attorney; Ivar Satero, Airport Commission; Cathy Widener, Airport Commission; Male Speaker, Janitors Union.
Continued to 5/7/03.

5/7/03, CONTINUED. Heard in Committee. Speaker Harvey Rose, Budget Analyst.
Continued to 5/21/03.

Heard in Committee. Speaker: Cathy Widener, Airport Commission.

TABLED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent. 1 - Sandoval

030693 **[Prevailing Wage Rates]**

Resolution fixing the prevailing wage rates for workers in public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by the City. (Civil Service Commission)

(No Public Benefit Recipient.)

4/25/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Kate Favetti, Civil Service Commission; Geoffrey Rothman, Department of Human Resources; Silvia Johnson.
5/21/03 Amendment of the Whole bearing same title prepared in Committee.

AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE.

RECOMMENDED AS AMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030690 **[Reserved Funds, Office of the Sheriff]**

Hearing to consider release of reserved funds, Office of the Sheriff (File No. 001488, Ordinance No. 228-00), in the amount $2,375,147 to repay the General Fund for costs incurred for the planning and environmental review phases of the San Bruno Jail Project. (Sheriff)

4/22/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Sheriff Michael Hennessey; Harvey Rose, Budget Analyst.
Release of reserved funds in the amount of $2,375,147 approved.

APPROVED AND FILED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030222 **[Performance measures and timeline for pending work in the Assessor's Office]**

Supervisor Dufty

Hearing to analyze backlog of work of the Assessor's Office; (2) financial impacts of said backlog; and (3) analyze and establish performance timelines and performance measures for that office.

2/11/03, RECEIVED AND ASSIGNED to Finance Committee. Sponsor requests this item be scheduled for consideration at the 2/19/03 Finance meeting.

2/13/03, TRANSFERRED to Finance and Audits Committee. New committee structure 2/17/03.

2/19/03, CONTINUED TO CALL OF THE CHAIR. Heard in Committee. Speakers: Supervisor Dufty; Mabel Teng, Assessor-Recorder; Edward Harrington, Controller; Harvey Rose, Budget Analyst; Theresa Contreau, Appraiser, Assessor-Recorder's Office, Local 21 representative; John Farrell, Assessor-Recorder's Office; Gus Kenup, Assessor-Recorder's Office; Janet Weinder, Management Assistant, Assessor-Recorder's Office; Tim Amber, Assessor-Recorder's Office; Alex Terrell, Appraiser, Assessor-Recorder's Office.

5/7/03, CONTINUED Speakers: None.
Continued to 5/21/03.

Speakers: None.
Continued to 6/4/03.

CONTINUED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

ADJOURNMENT

The meeting adjoured at 5:04 p.m.

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET ANALYST
1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642
FAX (415) 252-0461

May 15, 2003

TO: Finance and Audits Committee

FROM: Budget Analyst

SUBJECT: May 21, 2003 Finance and Audits Committee Meeting

Item 3 - File 03-0631

Department: Recreation and Park Department (RPD)

Item: Ordinance exempting the San Francisco Conservation Corps from the prevailing wage requirements and waiving the competitive bid requirements for the Recreation and Park Commission's award of a contract for construction of playgrounds, restoration of natural areas and implementation of erosion control measures in San Francisco.

Description: The proposed ordinance would waive the City's competitive bidding requirements, which would otherwise be required under Section 6.20 of the Administrative Code. The purpose of this waiver is to authorize the Recreation and Park Department (RPD) to award a construction contract, in an amount not-to-exceed $2.5 million, to the San Francisco Conservation Corps (SFCC), a nonprofit organization. That contract is for the 1) renovation of park playgrounds, 2) restoration of designated Significant Natural Resource Areas, and 3) implementation of erosion control measures in the parks throughout the City. The proposed ordinance would also exempt the subject RPD construction contract with SFCC

from prevailing wage requirements, pursuant to Section A 7.204 of the City's Charter.

Attachment I, provided by Mr. Marvin Yee of the RPD, contains a) program descriptions for the work to be done under the contract, b) various RPD facilities where the work is to be done, c) the allocation of funds by work category for the not-to-exceed $2.5 million contract, d) hourly rates for services to be provided, and e) funding sources for the contract.

According to Mr. Yee, Significant Natural Resource Areas are defined as RPD properties that meet specific criteria including properties which contain natural biotic or geomorphic remnants of the indigenous landscape, contain rare types of species or habitat, and are vulnerable to degradation from an imminent ecological crisis. Mr. Yee reports that there are approximately 26 such designated areas in the City, all of which may benefit from the proposed restoration work under the construction contract. According to Mr. Yee, at least eight playgrounds would be renovated under the contract, to comply with safety standards and wheelchair accessibility requirements. Mr. Yee also states that erosion control methods, at a minimum of five park locations, would be implemented under the contract to prevent park deterioration and to protect park built facilities and landscapes.

The proposed ordinance would also exempt the subject RPD construction contract with SFCC from prevailing wage requirements. The SFCC is eligible to be exempt from prevailing wage requirements in its construction contract with the RPD because SFCC meets the conditions for exemption set forth in Section A 7.204(b) of the City Charter. Section A 7.204(b) provides that the Board of Supervisors may exempt from the prevailing wage requirement any construction contract where the work is to be performed by a nonprofit organization that provides job training and work experience for disadvantaged individuals in need of such training and experience, and the nonprofit organization either (1) has a board of directors appointed by the Mayor or (2) exists primarily to design and build urban gardens, yards, and play areas. SFCC is a nonprofit organization that

provides job training and work experience for disadvantaged individuals. According to Mr. Yee, the SFCC has a 16-member board of directors appointed by the Mayor and exists primarily to design and build urban gardens, yards, and play areas.

Comments:

1. According to Mr. Yee, the proposed ordinance incorrectly states that the term of the construction contract would be four and one-half years. Mr. Yee advises that the correct contract term is five years, subject to annual renewal and subject to appropriation of funds by the Mayor and the Board of Supervisors. Therefore, the proposed ordinance should be amended to state the correct contract term.

2. Attachment II is a memorandum provided by Mr. Yee, which states the reasons as to why the RPD is requesting to award a not-to-exceed $2.5 million contract without utilizing the City's competitive bidding procedures.

3. The subject contract originally was to begin on May 1, 2001 and terminate on April 30, 2006. According to Mr. Yee, the RPD is requesting approval of this proposed ordinance at this time, approximately two years after the anticipated contract starting date, as a result of extended labor union discussions. Attachment III, provided by the RPD, explains why the proposed ordinance is coming to the Board of Supervisors approximately two years after the anticipated construction contract starting date. Mr. Yee reports that to date, no funds have been expended nor have any services been rendered by the SFCC with respect to this contract. According to Mr. Richard Kimball of the RPD, the term of this five-year contract is now expected to begin on July 1, 2003 and terminate on June 30, 2008.

4. According to Mr. Yee, the source of funds for the not-to-exceed $2,500,000 construction contract over its five-year term will include General Obligation Bonds; Park, Recreation and Open Space Funds; and grant funds, all of which are subject to approval by the Board of Supervisors. Additionally, Mr. Yee advises that the RPD anticipates private donor and foundation support.

Recommendations:

1. In accordance with Comment No. 1, amend the proposed ordinance to reflect the correct contract term of five years, not four and one-half years, as is contained in the ordinance.

2. Approval of the proposed ordinance, as amended, is a policy matter for the Board of Supervisors.

Attachment 1

Project: Renovation of children's play areas

Sites may include, but not limited to,:

24th St./York Mini Park
Buchanan St. Mall (Between Turk and Golden Gate Sts.)
Hayes Valley Playground (Hayes/Buchanan Sts.)
Kelloch-Velasco Playground
Kimball Playground (Ellis/Pierce Sts.)
Little Hollywood Park (Tocoloma/Lathrop Sts.)
Silver Terrace Playground (Waterville St.)

Scope of Work:

Provide materials and labor for, but not limited to:

Site demolition
Installation of play equipment
Installation of resilient surfacing, including rubber matting and playground sand
Concrete work
Decomposed granite paving
Disability access improvements
Landscaping

Scope of work shall not include carpentry, electrical, plumbing, or ironwork, unless approved by the SFRPD Assistant Superintendent of Parks, Structural Maintenance.

Personnel Rates:

Corpsmember Rate:	\$26.40/hour
Supervisor Rate:	\$30.00/hour

Estimated Budget: \$2,000,000 for the 5-year contract

Anticipated Sources of Funds:

General Obligation Bonds
Park, Recreation and Open Space Funds
Grant funds subject to approval by the Board of Supervisors
Private donor and foundation support

Source: Recreation and Park Department

Project: Restoration of natural areas

Examples of significant natural resource areas:

Bayview Hill	Hawk Hill
Brooks Property	Lake Merced
Buena Vista Park	Mount Davidson
Edgehill Open Space	Sharp Park
Golden Gate Park	Twin Peaks

Scope of Work:

The scope of work will consist of, but not limited to, the following:

Broom – Seedlings removed in spring by hand pulling; adult removed using weed wrenches or hand chain saws when individuals are too large for weed wrenches.

Fennel – Hand removal of adults and seedling with mattocks.

Cotoneaster – Cut shrubs with chain saw loppers.

Euclayptus – Saplings of 6" and less removed with chain saws.

Pampas grass – Hand removal with shovels and mattocks.

Plant and debris removal activities will be combined with other restoration activities such as seed collection, plant propagation, nursery maintenance and planting.

Personnel Rates:

Corpsmember Rate: $26.40/hour
Supervisor Rate: $30.00/hour

Estimated Budget: $250,000 for the 5-year contract

Anticipated Sources of Funds:

Park, Recreation and Open Space Funds
Grant funds subject to approval by the Board of Supervisors
Private donor and foundation support

Source: Recreation and Park Department

Project: Erosion control

Sites , but not limited to,:

Buena Vista Park
Golden Gate Park
McLaren Park
Pine Lake Park
Pioneer Park

Scope of Work:

Provide materials and labor for, but not limited to, proven and acceptable methods of erosion control, including trail improvements, minor grading, retaining walls up to 3' high, and biotechnical slope stabilization techniques (brush layering, branch packing, wattling, plastic or jute netting, and re-vegetation).

Scope of work shall not include canopy thinning, retaining walls greater than 3' high, or irrigation systems, unless approved by the SFRPD Assistant Superintendent of Parks (Structural Maintenance) or the SFRPD Urban Forester.

Personnel Rates:

Corpsmember Rate:	$26.40/hour
Supervisor Rate:	$30.00/hour

Estimated Budget: $250,000 for the 5-year contract

Anticipated Sources of Funds:

General Obligation Bonds
Park, Recreation and Open Space Funds
Grant funds subject to approval by the Board of Supervisors
Private donor and foundation support

Source: Recreation and Park Department

Attachment 2

The Receation and Park Department (RPD) wishes to award the subject contract for an amount not to exceed $2.5 million over a period of five years, without competitive bid, even though the expenditure involved in each contract exceeds $50,000, because:

(1) **of grant opportunities and time savings.** The SFCC is able to leverage funds that would otherwise not be made available to RPD, such as Community Development Block Grants (CDBG). Recently, the SFCC has been awarded a total of $200,000 Community Development Block Grant (CDBG) for 24th St./York Mini Park and Crocker Amazon Playground. To complete these renovation projects, RPD wishes to supplement those and future grants with City funds, which requires competitive bidding unless exempt by the Board.

The Board of Supervisors has historically exempted the SFCC from competitive bidding for individual projects that were funded in part with non-City sources, and supplemented with City funds to complete the project. With a 5-year contract in place, future SFCC projects would already be exempt from competitive bidding, thereby advancing project completion for each project by 2 months.

A master agreement with the SFCC would also strengthen RPD's applications for grants that give priority to capital projects that employ at-risk youth. $43 million is available for such projects through the Murray-Hayden Urban Park and Youth Services Program of the State's Park Bond Act of 2000.

(2) **of city-wide economic benefits.** The development of disadvantaged individuals through training and employment opportunities will best serve the public interest by having a significant positive impact on the economic health of the City. These individuals are the future labor force and leaders of the community.

Source: Recreation and Park Department

(3) **SFCC costs are competitive with for-profit contractor costs.** Below is an example of cost savings for Head St./Brotherhood Way Mini Park, a play area renovation project by SFCC for RPD completed in FY 00-01:

TASK	SFCC	FOR-PROFIT
Mobilization		$5,000
Demolition (2 laborers for 2 days)		$4,000
Play Equipment (tot structure)*		$33,000
Rubber Surfacing (1,036 s.f.)*		$46,620
Labor (@ $26/hr billing rate)	$54,144	
Materials	$35,856	
TOTAL	**$90,000**	**$88,620**

*includes labor and materials

(4) **of the social and civic benefits.** Although many aspects of the proposed agreement would result in measurable economic benefits, the societal benefits would be greater than the actual monetary costs to The City. For example, the SFCC provides Corps members with case management services, academic preparation, career development and placement, leadership training and intangible skills (self-esteem building, problem-solving skills, etc.) for professional and personal growth, all of which are services provided and skills developed through the SFCC *beyond* fulfilment of the contract duties. The net result is a community of productive individuals integrated into society, rather than individuals segregated to an environment of incarceration.

(5) **quality construction and management services are performed to the Recreation and Park Department's satisfaction.** As with any construction project performed by a non-City entity, the quality of work is inspected by RPD prior to final acceptance. Historically, the SFCC has performed the proposed services to the satisfaction of RPD.

Source: Recreation and Park Department

Attachment III

MEMORANDUM

TO. Board of Supervisors
Budget Analyst Office

FROM: Richard Kimball RK
Purchasing and Contract Manager
Recreation and Park Department

SUBJECT: Conservation Corps Contract

DATE: April 30, 2003

The subject contract had a May 1, 2001 beginning date and a termination date of April 30, 2006. The department of Recreation and Park is requesting approval of the proposed ordinance at this time, over two years after the starting date due to the following issues:

- Extended labor discussions with the gardeners and laborer union local 261 that involved worker replacement and duties. This item delayed submittal until May 2002.

- At the May 2002 meeting of the Finance Committee Board of Supervisors, questions were raised regarding the wage rates the Conservation Corps was charging the city and their assignments. This required clarification and negotiation from the contractor and research of staff.

No funds have been expended nor have any services been performed by the SFCC in relation to this contract.

The term of this contract is now expected to begin July 1, 2003 and terminate June 30, 2008

Please contact me at 831-2712 or page me at 208-4496 anytime

McLaren Lodge, Golden Gate Park
501 Stanyan Street
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Item 4 - File 03-0742

Department: Department of Elections

Item: Ordinance appropriating funding not to exceed $1,500,000 from the General Fund Reserve for professional services to implement a ranked-choice voting system for the Department of Elections.

Source of Funds: General Fund Reserve

Budget: Up to $1,500,000 for Equipment and Professional Services (See Comments Nos. 2 and 3)

Description: In March of 2002, the voters of San Francisco approved a Charter Amendment (Proposition A) to require the City to use an Instant Run-Off (also known as ranked-choice) voting method to replace separate run-off elections for local offices. Ranked-choice voting permits each voter to rank at least a first, second and third choice among the local candidates for office during one election. When the votes are counted by the Department of Elections, if one candidate receives more than 50 percent of the first-choice votes in the first round, then that candidate is elected. However, if no candidate receives more than 50 percent of the first-choice votes, the candidate who receives the fewest first-choice votes would be eliminated and those voters whose first choice candidate was eliminated would then have their votes transferred to their second-choice candidate. This process of transferring votes to the voter's next-choice candidate and eliminating candidates with the fewest votes would be repeated until one candidate received more than 50 percent of the votes. In accordance with Proposition A, the City must begin using the new ranked-choice voting method no later than November of 2003.

The proposed ordinance would appropriate up to $1,500,000 from the General Fund Reserve for the Department of Elections to fund an amendment to an existing contract with Election Systems & Software (ES&S). ES&S would use these funds to modify the City's existing elections hardware and

software systems in order to implement ranked-choice voting in San Francisco. According to Mr. John Arntz of the Department of Elections, under the proposed amended contract, ES&S would develop (1) a memory flashcard to capture the ranked-choice votes, and (2) firmware or embedded chips to give instructions to the system to change the way that votes are tabulated. In addition, under the proposed contract, ES&S would be responsible for acceptance testing of the system and equipment to insure that the system design and implementation become operational.

Comments:

1. According to Mr. Arntz, ES&S has an existing contract with the Department of Elections for a total of $4,576,577 to provide the existing election equipment, software and network, as well as for ongoing technical support during each election. The existing ES&S contract extends until January of 2005. The proposed up to $1,600,000 (see Comment No. 2) amendment to the ES&S contract would result in a total contract of $6,176,577 between the City and ES&S.

2. Under the proposed amended contract between the Department of Elections and ES&S, the Department would make six milestone payments to ES&S, if specific requirements to implement a ranked-choice voting system are achieved by ES&S. A memorandum from Mr. Arntz, to the President of the Board of Supervisors, dated April 24, 2003 is included as Attachment I and identifies the six milestone payments that would be made by the City to ES&S. The Budget Analyst notes that the proposed six milestone payments total up to $1,600,000, although the proposed supplemental appropriation is for $1,500,000, or $100,000 less than the amended contract milestones provide.

Mr. Arntz advises that the Department of Elections is requesting that the Board of Supervisors amend the proposed ordinance to provide an additional $100,000, for a total of up to $1,600,000, to cover these additional costs, if the proposed ordinance is approved.

3. Mr. Arntz advises that the existing contract with ES&S would be amended to provide the additional payments totaling up to $1,600,000. According to Mr. Arntz, the additional work providing for the additional payments of up to $1,600,000 was not competitively bid because based on informal discussions with other vendors, other vendors were not sufficiently familiar with the City's existing optical scanning voter equipment, but, rather were more familiar with touchscreen voting equipment. Regarding the basis for the projected up to $1,600,000 contract amendment to complete the work as described above, Mr. Arntz provided an ES&S price listing of hardware, software and network requirements which totals approximately $1,600,000. Mr. Arntz notes that ES&S has never previously modified an optical scanning equipment system to accommodate ranked-choice voting, as is being requested by San Francisco. Mr. Arntz advises that the Department of Elections and the City Attorney's Office have been in negotiations with ES&S since approximately January of 2003 with respect to the additional work to be provided by ES&S.

4. According to Mr. John Mott-Smith of the California Secretary of State's Office, prior to implementing any ranked-choice voting election system, the Secretary of State must certify the proposed election system and procedures that would be used to record the election results. Mr. Mott-Smith advises that currently no ranked-choice voting system for San Francisco, or for any other jurisdiction in California, has been certified by the Secretary of State. In addition, Mr. Mott-Smith advises that it has historically been the position of the Secretary of State's Office that, prior to the State certifying any software modifications to existing voting systems, the proposed modifications must also undergo Federal testing by the Independent Testing Authority for compliance with the Federal Election Commission's requirements. However, Mr. Mott-Smith advises that whether such Federal testing would be required cannot be

determined until an application for certification is received by the Secretary of State's Office. Mr. Mott-Smith could not estimate precisely how long such Federal testing would take, but noted that such testing could take up to several months.

After approval of the Federal requirements, the State would undertake their certification process, which Mr. Mott-Smith estimates would require approximately 45 days. According to Mr. Mott-Smith, the State certification process primarily focuses on performance testing and analysis of the proposed ranked-choice voting system, including full compliance with all applicable State and local laws, an on-site demonstration of the system, an independent consultant's review and then recommendation by the Secretary of State's Voting Systems Panel, primarily comprised of Secretary of State staff.

5. On March 14, 2003, the Department of Elections submitted an application to the Secretary of State for certification of a manual ranked-choice voting system to capture votes according to Proposition A's requirements. The Department indicated that this application was being submitted to the Secretary of State "to ensure that San Francisco has a system in place to capture voters' intent should we be unable to use a fully mechanized vote tabulation system for our November 2003 election." In this application, the Department of Elections states that in order to "successfully implement this manual system, or any system, we think that the certification process must be completed before July 1, 2003", which the Budget Analyst notes would be in less than six weeks from the May 21, 2003 Finance Committee meeting.

On March 27, 2003, the Secretary of State advised the Department of Elections that the application, as submitted, for certification of a manual ranked-choice voting system, was not complete and not in the correct format. On April 18, 2003, the Department of Elections resubmitted this application for certification of a manual ranked-

choice voting system, to include additional information in the format specified by the Secretary of State. Mr. Arntz advises that the Department of Elections will be conducting a demonstration of the proposed manual ranked-choice voting system to the Secretary of State on before the end of May of 2003.

Mr. Arntz estimates that if this manual ranked-choice voting system is certified by the Secretary of State, the City would incur approximately $2,600,000 of additional costs, above the amount that would otherwise be needed to conduct the November 4, 2003 election, consisting primarily of hiring additional temporary personnel for counting the ranked-choice ballots. Mr. Arntz estimates that the counting of such ranked-choice ballots is expected to take all of November and possibly into December of 2003. The Budget Analyst notes that, without ranked-choice voting, after the November 4, 2003 election, the regular run-off election would be held on December 9, 2003, and would result in an additional cost to the City of an estimated $1,500,000, or $1,100,000 less than the manual counting of the ranked-choice ballots. In response to Budget Analyst inquiries, Mr. Arntz advises that the Department of Elections needs to certify the election results within 28 days and he is concerned whether the Department will be able to meet that deadline with a manual count.

6. As previously noted, Attachment I addresses the critical milestones for implementing a ranked-choice voting system that would need to be achieved by ES&S under the proposed amended contract provisions. ES&S would be paid up to $1,600,000 to achieve such milestones. Critical Milestone #1 requires ES&S to submit an Application for Certification of the Ranked Choice Voting System to the California Secretary of State, which must be completed no later than July 1, 2003. Based on inquiries of the Budget Analyst, Ms. Claire Sylvia of the City Attorney's Office advises that the intent of the proposed amended contract language is to require that ES&S submit a

See "revised"

choice voting system, to include additional information in the format specified by the Secretary of State. Mr. Arntz advises that the Department of Elections will be conducting a demonstration of the proposed manual ranked-choice voting system to the Secretary of State on before the end of May of 2003.

Mr. Arntz estimates that if this manual ranked-choice voting system is certified by the Secretary of State, the City would incur approximately $2,600,000 of additional costs, above the amount that would otherwise be needed to conduct the November 4, 2003 election, consisting primarily of hiring additional temporary personnel for counting the ranked-choice ballots. Mr. Arntz estimates that the counting of such ranked-choice ballots is expected to take all of November and possibly into December of 2003. The Budget Analyst notes that, without ranked-choice voting, after the November 4, 2003 election, the regular run-off election would be held on December 9, 2003, and would result in an additional cost to the City of an estimated $1,500,000, or $800,000 less than the manual counting of the ranked-choice ballots. In response to Budget Analyst inquiries, Mr. Arntz advises that the Department of Elections needs to certify the election results within 28 days and he is concerned whether the Department will be able to meet that deadline with a manual count.

6. As previously noted, Attachment I addresses the critical milestones for implementing a ranked-choice voting system that would need to be achieved by ES&S under the proposed amended contract provisions. ES&S would be paid up to $1,600,000 to achieve such milestones. Critical Milestone #1 requires ES&S to submit an Application for Certification of the Ranked Choice Voting System to the California Secretary of State, which must be completed no later than July 1, 2003. Based on inquiries of the Budget Analyst, Ms. Claire Sylvia of the City Attorney's Office advises that the intent of the proposed amended contract language is to require that ES&S submit a

completed application to the Secretary of State, in order to achieve Critical Milestone #1.

In addition, Critical Milestone #2 requires approval by the Secretary of State of the ranked-choice voting system, which must be completed no later than August 1, 2003. The Budget Analyst notes that, if the ES&S system is not certified by August 1, 2003, and all of the prior Critical Milestones are achieved by their earliest due dates, the Department of Elections would still have paid ES&S up to $300,000. Based on discussions with Ms. Sylvia, if the Secretary of State does not certify the proposed ES&S ranked choice voting system by August 1, 2003, the Department of Elections could terminate the ranked-choice voting portion of the ES&S contract, at that time. However, the City would already have paid ES&S up to $300,000.

7. Under the proposed up to $1,600,000 request, the Department of Elections would pay ES&S, a private, for-profit company, to develop a new ranked-choice voting system, which does not currently exist. Although the City would be paying for the development of this new system by a private company, according to Mr. Robert Bryan of the City Attorney's Office, the City did not negotiate any provisions related to the ownership of the new software. Therefore, Mr. Bryan advises that, although under the existing contract with ES&S, the City has a perpetual license to use the software developed by ES&S, ES&S would continue to own any system that ES&S develops. As a result, ES&S could potentially resell the ranked-choice voting system, paid for by the City and County of San Francisco, to other jurisdictions or interested parties, with no revenues or profit sharing revenues returned to the City and County of San Francisco. Since the City and County of San Francisco would be paying up to $1,600,000 under the proposed amended contract with ES&S for ES&S to develop new, not yet State certified equipment and software, and since San Francisco would therefore be assuming the expense and risk of such development being certified by the State

and available for use for the November 4, 2003 election, the Budget Analyst recommends that the proposed contract with ES&S be amended to provide for shared ownership and future potential revenues from the newly developed software and equipment.

8. Attachment II, provided by Mr. Arntz identifies another alternative ranked-choice voting through a central processing system, which would bring all ballot cards from the polling places to City Hall for processing. As shown in Attachment II, the Department of Elections has made a preliminary estimate that it would cost $869,980 to implement this alternative processing system, with additional costs of approximately $800,000 for ES&S, or total costs of approximately $1,669,980. However, as identified in Attachment II, the Department advises that there are several disadvantages of this alternative. In addition, Mr. Arntz advises that the Department has not submitted this alternative processing system to the Secretary of State for certification.

9. Historically, a run-off election in San Francisco has cost approximately $1,500,000. If the proposed up to $1,600,000 supplemental appropriation results in the development of a modified system and software, that is certified by the Secretary of State, to implement ranked-choice voting in November of 2003, approval of the proposed one-time up to $1,600,000 supplemental appropriation cost could result in significant future potential savings, each time that a run-off election in the City is required. However, Mr. Arntz advises that there are likely to be other additional costs incurred for the November 4, 2003 ranked-choice election due to the need to provide additional training for staff, more ballots that are likely to be spoiled, and support staff to assist voters in utilizing the new ranked-choice voting procedures, although Mr. Arntz cannot provide a budget estimate of such additional costs. Mr. Arntz notes that a separate $2,400,000 supplemental appropriation is currently pending for the

Department of Elections to conduct education and outreach to San Francisco voters regarding ranked-choice voting.

10. In summary, the Department of Elections is reporting that the amended ES&S contract would require up to $1,600,000, or $100,000 more than the proposed $1,500,000 supplemental appropriation. Therefore, the Department of Elections is requesting that the Board of Supervisors amend the proposed ordinance to provide an additional $100,000, for a total of up to $1,600,000 to cover the cost of the proposed work to be completed by ES&S. In addition, the Budget Analyst notes that this up to $1,600,000 amended contract with ES&S was not competitively bid, under these contract arrangements, the City would pay ES&S, a private, for-profit company to develop a new ranked-choice voting system, which does not currently exist and ES&S has never previously modified an optical scanning equipment system to accommodate such ranked-choice voting, as is being requested by San Francisco. Therefore, the Budget Analyst recommends that, since the City and County of San Francisco would be assuming the expense and risk of such development, the contract should be amended to provide for shared ownership and future potential revenues to the City from the newly developed software and equipment.

Prior to implementing any ranked-choice voting election system, the Secretary of State must certify the proposed election system, and historically, any software modifications must also undergo Federal testing, prior to State certification, which may require several months.

The Department of Elections has submitted an application to the Secretary of State for certification of a <u>manual</u> ranked-choice voting system, which is estimated to cost an additional $2,600,000 with the counting of such ranked-choice ballots expected to take all of November and into December of 2003. The Budget Analyst notes that, without ranked-choice voting, a regular run-off

election would be held on December 9, 2003, and would cost approximately $1,500,000, or $1,100,000 less than such a manual counting.

Critical Milestone #2 in the proposed ES&S contract requires approval by the Secretary of State of the ranked-choice voting system, no later than August 1, 2003. If the Secretary of State does not certify the proposed ES&S ranked-choice voting system by August 1, 2003, the Department of Elections could terminate the ES&S contract, however, by that time the City would already have paid ES&S up to $300,000.

Recommendations:

1. Request the Department of Elections to amend the subject contract with ES&S to provide (a) for the City obtaining a shared ownership and (b) for the City to receive future potential revenues from the newly developed software and equipment to implement ranked-choice voting, as discussed in Comment No. 7.

2. As discussed in Comment No. 2, the Department of Elections is requesting that the Board of Supervisors amend the proposed ordinance to provide an additional $100,000, for a total of up to $1,600,000 to cover the projected costs of the amended contract.

3. Approval of the proposed ordinance, as amended, is a policy matter for the Board of Supervisors.

election would be held on December 9, 2003, and would cost approximately $1,500,000, or $800,000 less than such a manual counting.

Critical Milestone #2 in the proposed ES&S contract requires approval by the Secretary of State of the ranked-choice voting system, no later than August 1, 2003. If the Secretary of State does not certify the proposed ES&S ranked-choice voting system by August 1, 2003, the Department of Elections could terminate the ES&S contract, however, by that time the City would already have paid ES&S up to $300,000.

Recommendations:

1. Request the Department of Elections to amend the subject contract with ES&S to provide (a) for the City obtaining a shared ownership and (b) for the City to receive future potential revenues from the newly developed software and equipment to implement ranked-choice voting, as discussed in Comment No. 7.

2. As discussed in Comment No. 2, the Department of Elections is requesting that the Board of Supervisors amend the proposed ordinance to provide an additional $100,000, for a total of up to $1,600,000 to cover the projected costs of the amended contract.

3. Approval of the proposed ordinance, as amended, is a policy matter for the Board of Supervisors.

DEPARTMENT OF ELECTIONS
City and County of San Francisco

Attachment I

JOHN ARNTZ
Director

TO: Honorable Matt Gonzalez, President San Francisco Board of Supervisors
FROM: John Arntz, Director, Department of Elections
SUBJECT: Supplemental Appropriation for ES&S Contract
DATE: April 24, 2003

I am sending this memorandum in response to your request for information regarding the cost of modifying the contract with our election systems provider ES&S to implement ranked-choice voting for the November 4, 2003 election.

Please note that the Department and ES&S have not finalized every aspect of the contract as of today. Still, the process is nearly complete for clarifying what ES&S will provide to the City and the costs for this service. Even though we do not expect the costs listed in this memorandum to change before finalizing the contract, there is always the chance that the amounts may increase or decrease.

Presently the cost of the vendor-supplied services will not exceed $1.5 million in addition to the annual service payment of $145,900

The milestone payments are scheduled as follows:

1. Payment # 1 – If ES&S has delivered the design specifications for all RCV-modified Hardware, Firmware, and Application Software to Department of Elections, ES&S may submit an invoice for $100,000.

2. Payment #2 – If ES&S has met RCV Critical Milestone #1 on or before June 2, 2003, it may submit an invoice for $200,000. If ES&S has failed to meet RCV Critical Milestone #1 on or before June 2, 2003 but has met the critical milestone on or before June 9, 2003, it may submit an invoice for $150,000. If ES&S has failed to meet RCV Critical Milestone #1 on or before June 9, 2003 but has met the critical milestone on or before July 1, 2003, ES&S may submit an invoice for $100,000.

3. Payment #3 – If ES&S has met RCV Critical Milestone #2, ES&S may submit an invoice for $200,000.

4. Payment #4 – If ES&S has met RCV Critical Milestone #3, ES&S may submit an invoice for: (a) $250,000, if ES&S met RCV Critical Milestone #1 after June 9, 2003; (b) $200,000, if ES&S met RCV Critical Milestone #1 after June 2, 2003 but on or before June 9, 2003; or (c) $150,000, if ES&S met RCV Critical Milestone #1 on or before June 2, 2003.

5. Payment #5-ES&S may submit an invoice for $100,000 on November 5, 2003, if ES&S has satisfactorily performed all election day Services in accordance with Appendices B, C-1, and D.

6. Payment #6 – If ES&S has met RCV Critical Milestone #5, it may submit an invoice for $750,000.

As referenced in the payment schedule, Critical Milestone #1 requires ES&S to submit an Application for Certification of a RCV-modified Voting System to the California Secretary of State; Critical Milestone #2 requires approval by the Secretary of State of that RCV-modified voting System; Critical Milestone #3 requires delivery of the Eagle Hardware Upgrade material, installation of all Hardware, Firmware, and Application Software certified by the Secretary of State, and performance of Initial and End to End RCV Acceptance Testing of all RCV Hardware, Firmware, and Application Software; Critical Milestone #5 requires certification of the Logic and Accuracy testing.

Please contact the Department at (415) 554-4375 if you need any additional information.

J.A.

DEPARTMENT OF ELECTIONS
City and County of San Francisco

JOHN ARNTZ
Director

To: Debra Newman, Budget Analyst, Board of Supervisors
From: John Arntz, Director of Elections
Re: Centrally Processing Ranked-Choice Ballots
Date: May 15, 2003

In response to your concerns regarding the costs for implementing ranked-choice voting (RCV) in San Francisco, the Department of Elections has reviewed the option of bringing all cards from the polling places to City Hall for processing. A "central processing plan" means that we would not capture votes at the polling places as is the current process, but will read the cards on the optical scanning equipment used to currently read absentee ballots mailed to City Hall.

A central processing plan could serve as a workable contingency plan in the event the machines used at the precincts, "eagles," cannot be modified in time for the upcoming election. The advantage of capturing votes at the precinct level is we can transmit the results to City Hall on the evening of the election. The advantage of a central processing approach is that it is probably less costly than a precinct-based system, although the costs for central processing will be recurring for each subsequent election. Two disadvantages are that bringing cards to City Hall for processing creates significant issues regarding ballot security, and, we will gather election results piecemeal over a two-week period.

The Department uses two "IV-C" optical scanning units at City Hall for processing primarily absentee and provisional ballots. To process all RCV cards from all precincts, we expect to need seven to nine machines. The Department does not have the space available for both the necessary equipment and personnel. While planning our manual process to count votes, we tried to find a suitable location. We were unsuccessful. The Department would need assistance finding a location at a suitable cost. Ideally, we prefer to have one location for the processing of precinct, absentee, and provisional ballots. If we create a separate location for a central processing approach, we will need to move all our servers and computer equipment to this site. As with ballots, any handling of the equipment devoted specifically to processing votes is a highly sensitive matter.

1 Dr Carlton B Goodlett Place – Room 48, San Francisco CA 94102-4634
Voice (415) 554.4375 Fax (415) 554.7666

Still, it is less expensive to move all of the equipment than attempting to develop a secure line to servers located in City Hall. Any location must be suitable for using the equipment since adding fans, additional power sources, and server connections are expensive, and may be utilized for only one election since we would need to return the equipment to our City Hall office. The location will also determine costs associated with security and personnel.

Finally, we have no estimate on the costs our vendor ES&S will incur in implementing a central processing method.

Encl; Budget Estimate

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Department of Elections
City and County of San Francisco

Draft Budget Estimate for Central Processing Location - Additional IV-C machines to tabulate the RCV Cards

	Item description	Quantity	Rental rate	Hourly Rate	Days	Total Cost	
1	**Rental of Additional IV-C machines** (should include set installation, set-up and wiring cost - for a **total of 9 units)**	7	$10,000.00		1 mo.	$70,000.00	$70,000.00
2	**Staging and storage space** - used for staging RCV cards for computer processing - used for storage of tabulated RCV cards	3000	?		?	?	?
3	**Staffing**						
	Vendor personnel	?		?	15	?	
	Security personnel	?		?	15	?	
	Logistic staff	20		$25.00	15	$60,000.00	
	RCV Card preparation	20		$25.00	15	$60,000.00	
	IV-C machine assistants	16		$25.00	11	$35,200.00	
	Lead porsons	4		$25.00	15	$12,000.00	
	Review/Remake staff	200		$25.00	11	$440,000.00	
	Remake monitors	10		$25.00	11	$22,000.00	
	Outstack assistant	9		$25.00	11	$19,800.00	
	Observer guides	8		$25.00	15	$24,000.00	$ 673,000.00 Plus
4	**Secured Communication Network Line for the IV-C machines outside the computer room (Adm.Services, DTIS, Building Operations, DPW, Electricians)**	1				$100,000.00	$100,000.00
5	**Supplies, materials, and equipment (boxes, header cards, markers, seals, gloves, pallet jacks, fork lifts)**	1		$25,000.00		$25,000.00	$25,000.00
6	**Vehicles (16 ft box truck)**	2	$495.00/wk		2 wks	$1,980.00	$1,980.00
						Known Estimated Cost :	**$ 869,980.00 Plus**

Item 6 - File 03-0400

Note: This item was continued by the Finance and Audits Committee at its meeting of May 7, 2003.

Department: Port of San Francisco

Item: Resolution approving Fourth Lease Amendment to Port Lease No. L-11859 between the Port Commission and Bundox Restaurant, Inc., a California corporation ("Tenant) for the lease of real property known as the Waterfront Restaurant located at Pier 7 1/2 (Broadway and The Embarcadero).

Purpose of Lease: To amend the rent structure and term of the Lease based on the terms and conditions set forth in the Fourth Amendment.

Lessor: Port of San Francisco

Tenant: Bundox Restaurant, Inc.

No. of Square Ft.: The existing Lease between the Port and Bundox Restaurant, Inc. is for 19,253 square feet of space on the subject premises located at Pier 7 ½ consisting of approximately 9,189 square feet of in-door dining space, 2,705 square feet of outdoor dining space and 7,359 square feet of public access space and parking space for 10 vehicles. The public access space consists of an outside area extending around the waters edge on the east side of the restaurant and outdoor dining areas on the north side of the restaurant, adjacent to the parking area.

Term of Existing Lease Between the Port and Bundox Restaurant Inc.: 20 years, beginning on July 1, 1996 and terminating on June 30, 2016

Proposed Term of Lease Between the Port And Bundox Restaurant Inc. Under the Proposed Amendment:

An extension of an additional eight years and seven months, from the original termination date of June 30, 2016 to January 31, 2025

Current Rental Payments to Port by Bundox Restaurant, Inc.:

Base Rent

Base Rent is currently $21,785 monthly (approximately $2.37 per square foot per month based on 9,189 square feet of indoor dining space), or $261,420 annually. The Base Rent is adjusted every three years for a cost of living adjustment based on the Consumer Price Index, and, in year ten (as of July 1, 2006), the Base Rent would be adjusted to the greater of a cost of living increase based on increases in the Consumer Price Index, or 50 percent of the average total monthly rent, including percentage rent, paid by the tenant for the previous three years of the lease.

Percentage Rent:

Bundox Restaurant, Inc. shall pay to the Port the greater of 1) the Base Rent or 2) the Percentage Rent calculated at seven percent of gross revenues from the operation of the restaurant.

Total rent collected by the Port between Calendar Year 1997 and Calendar Year 2002 is as follows:

Year	Amount of Gross Revenues	Total Percentage Rent Reported by the Port	Rent Credits Applied	Total Rent Paid to Port Net of Rent Credits
1997[1]	$2,795,503	$258,669	$61,575	$197,094
1998	6,258,790	438,115	96,246	341,869
1999	6,941,517	485,906	105,763	380,143
2000	6,628,727	464,011	92,406	371,605
2001	4,702,050	329,143	38,459	290,684
2002[2]	3,688,560	265,218	7,205	258,013
Total	**$31,015,147**	**$2,241,062**	**$401,654**	**$1,839,408**

Proposed Rental Payments to Port by Bundox Restaurant, Inc. Under the Proposed Amendment:

Base Rent Under the Proposed Lease Amendment: $10,000 monthly (approximately $1.09 per square foot per month based on 9,189 square feet of dining space) or $120,000 annually beginning retroactively to November 1, 2002 through the proposed termination date of January 31, 2025. After the "Threshold Date", which is the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000 annually, the Base Rent would be adjusted annually for a cost of living adjustment based on the Consumer Price Index. The proposed Base Rent is a reduction of $141,420 annually, or 54.1 percent, from the current Base Rent of $261,420 annually. Bundox would be required to pay "Deferred Rent", which is the difference between (a) the $10,000 monthly in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (b) the $21,785 monthly in Base Rent paid to the Port under the current lease, times the number of calendar months from November 1, 2002 to the Threshold Date. Such deferred rent is

[1] 1997 figures include November 1996 and December 1996 payments to the Port.

[2] 2002 figures do not reflect reduced rent paid by Bundox in November of 2002 and December of 2002 (see Comment No. 9).

required to be paid to the Port at either (1) the end of the lease term or 2) subsequent to the refinancing of the Lease or sale of the Waterfront Restaurant, to the extent that any excess sale proceeds exist after repayment of the Section 108 Loan (see Description below for information on the loan).

__Percentage Rent Under the Proposed Lease Amendment:__
Bundox Restaurant, Inc. shall pay to the Port the greater of 1) the Base Rent or 2) the Percentage Rent calculated at six percent of gross revenues, a reduction of one percent from the existing percentage of gross revenues from the operation of the restaurant.

Description: In December of 1994, the Board of Supervisors approved a new lease with Bundox Restaurant, Inc., or "Bundox", for the Waterfront Restaurant (File 65-94-17), which consists of a two-story building owned by the Port, public access space and a parking lot, at Pier 7 ½, on The Embarcadero at the foot of Broadway, for a 20-year lease period, at a Base Rent of $17,500 per month, or $210,000 annually, and a Percentage Rate of 7 percent. Prior to that time, Bundox had operated the Waterfront Restaurant at Pier 7 ½ under a lease with the Port since 1969.

The 1994 Lease provided for significant tenant improvements to the property, to be made by Bundox in two Phases, as explained by Ms. Carol Anderson of the Port on page 2 of Attachment II to this report. Under the provisions of the 1994 Lease, the Port was to pay for up to 50 percent of a maximum of tenant improvement total costs of $3,400,000, up to a maximum of $1,000,000 for Phase I and up to a maximum of $700,000 for Phase II, totaling a maximum of $1,700,000 (see Comment No. 1). The Port's share of the cost of tenant improvements, not to exceed $1,700,000, would be paid for in the form of Rent Credits, resulting in Bundox not having to pay to the Port the portion of the Percentage Rent which exceeded the Base Rent, over a ten year period (see Comment No. 4).

Ms. Anderson reports that because Bundox was unable to obtain financing for Phase I of the tenant improvements, the Lease became void on July 1, 1995 (Attachment II, page 3). Ms. Anderson reports that during the six-month period between December of 1994 and June 30, 1995, Bundox operated the Waterfront Restaurant under the 1994 Lease terms (i.e., the greater of Base Rent of $17,500 monthly or 7 percent of gross revenues). Bundox obtained preliminary approvals for loans from Heller First Capital and the Mayor's Office of Community Development (MOCD), which enabled Bundox to enter into the Lease. On June 24, 1996, the Board of Supervisors reaffirmed the previously voided (as of June 30, 1995) 20-year lease, for a new 20-year term from July 1, 1996 through June 30, 2016, and approved the First Amendment to the Lease and Consent to Encumbrance (File No. 65-94-17). Ms. Anderson notes that during the one-year period between June 30, 1995, when the 1994 Lease was voided, and June 24, 1996, when the Lease was reaffirmed, Bundox operated the Waterfront Restaurant on a month to month holdover basis under the pre-1994 Lease terms. According to Ms. Patel of the City Attorney's Office, under the Consent to Encumbrance, in the event of nonpayment of the MOCD loan by Bundox, MOCD would have the right to acquire the leasehold asset from Bundox which would include assuming obligations of the Lease, including all payments owed by Bundox to the Port. Accordingly, to pay the obligations of the lease, MOCD would have the option to either a) operate the Waterfront Restaurant or b) sublease the Waterfront Restaurant to a new owner subject to consent by the Port.

On November 1, 1996, Bundox entered into a Loan Agreement with the City through the MOCD Section 108 Loan Program, funded by the U.S. Department of Housing and Urban Development (HUD), in the amount of $3,250,000 (see pages 1 and 2 of Attachment III). The purpose of the loan was to fund the entire construction cost for Phase I and Phase II of the tenant improvements according to Mr. Lerma (see Comment No. 6). According to Ms. Anderson, the MOCD Section 108 Loan provided for more favorable

financing terms than the preliminary loan agreement with Heller First Capital. The Board of Supervisors approves acceptance and expenditure of Section 108 Revolving Loan Guarantee funds each year during approval of the Community Development Block Grant Program. However, as noted on page 2 of Attachment IV, provided by Mr. Lerma, the specific Section 108 Loan made by MOCD to Bundox, was not subject to Board of Supervisors approval.

On November 12, 1996, the Port Commission approved the Second Amendment to the Lease and Consent to Encumbrance (Resolution No. 96-117), which removed Heller First Capital as lender and consented to MOCD as lender, as explained on page 5 of Attachment II. The Port Commission approved the Third Amendment to the Lease (Resolution No. 97-70), on July 22, 1997, to provide for modifications to the size and location of the tenant improvements and allowed reduced rent[3], as provided for in the 1994 Lease, while the Waterfront Restaurant remained open for business, as explained on page 6 of Attachment II. According to Ms. Anderson, the Board of Supervisors did not approve the Second or Third Amendments to the Lease because the amendments only added minor modifications to terms of the Lease previously approved by the Board of Supervisors.

Ms. Anderson reports that without the proposed subject Fourth Lease Amendment restructuring of the Current Lease, Bundox will "most likely default" on the Lease, as explained on pages 2 and 3 of Attachment I, which would likely 1) require the Port to find another operator for the Waterfront Restaurant under less favorable terms than the existing Lease, and 2) result in the MOCD's inability to recover the remaining MOCD Section 108 Loan funds due from Bundox.

[3] Under the terms of the 1994 Lease, Bundox would pay reduced rent of $5,000 per month, for up to nine months, during the construction period in which the restaurant was closed for business. Under the Third Amendment to the Lease, because Bundox intended to keep its business open during construction of Phase I of the tenant improvements, the Lease was amended to provide for reduced rent of $5,000 per month, for up to nine months, for the construction period in which the restaurant was open. According to Ms. Anderson, work for Phase I and Phase II of the tenant improvements were performed simultaneously during the approximate nine-month period from May of 1997 through January of 1998.

In order to prevent the Waterfront from defaulting on the Lease, the Port has, according to Ms. Anderson, amended the rent structure and term of the Lease in the Fourth Amendment, as follows:

- The term of the lease would be extended by eight years and seven months, from the existing lease ending date of June 30, 2016 to the proposed lease ending date of January 31, 2025.

- The Base Rent would be reduced, from $21,785 monthly or $261,420 annually to $10,000 monthly or $120,000 annually, with annual CPI adjustments after the Threshold Date, for the entire lease term from November 1, 2002 through January 31, 2025.

- Deferred Rent, which is the difference between (a) $10,000 in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (b) $21,785 in Base Rent paid to the Port under the current Lease, times the number of calendar months from November 1, 2002 to the Threshold Date, is required to be paid to the Port at either (1) the end of the lease term or 2) subsequent to the sale of the Waterfront Restaurant, to the extent that any excess sale proceeds exist after repayment of the Section 108 Loan.

- Percentage Rent would be reduced, from seven percent of gross revenues, to six percent of gross revenues from November 1, 2002 through January 31, 2025.

  However, from November 1, 2002 through the Threshold Date, the Percentage Rent is subordinate to operating expenses so that Bundox would not be required to pay any monthly percentage rent if expenses exceed gross revenues. If the Waterfront Restaurant generates a net operating income in any month, then Bundox would, pay 50 percent of the net operating income as principal debt reduction to the MOCD loan and retain the remaining 50 percent.

Under the proposed lease, from the Threshold Date through January 31, 2012, the Percentage Rent is no longer subordinate to operating expenses. However, Bundox would be required to pay 50 percent of the percentage rent which exceeds the base rent amount as principal debt reduction to the MOCD loan, and the remaining 50 percent would be paid to the Port.

- Rent credits for the cost of Bundox's share of the tenant improvements would not be granted by the Port to Bundox.

- Payment upon transfer of the Lease in connection with a sale of the Waterfront Restaurant would be distributed first, to pay the remaining balance of the MOCD Section 108 Loan, second, to pay for Port Deferred Rent and last, to be shared equally by the Port and Bundox should any net funds remain. In addition, the Port could renegotiate a new rental rate with the new owner after one-year.

Pages 4 through 6 of Attachment I contains a description of the proposed amended lease terms.

Comments:

1. According to Ms. Anderson, the tenant improvements began in May of 1997 and were completed in January of 1998. Ms. Anderson advises that the Port anticipated tenant improvement costs in 1994 of $2,930,000 ($1,875,000 plus $1,055,000) as described on page 8 of Attachment II, but the actual costs upon completion of the tenant improvements in January of 1998 totaled $3,277,545. Ms. Anderson notes that under the 1994 Lease, the Port agreed to pay up to 50 percent of the tenant improvements up to a maximum of $1,700,000, or $1,638,773 of the total tenant improvement costs of $3,277,545, through rent credits granted to Bundox by the Port which resulted in the Bundox not having to pay the Port the full amount of the Percentage Rent in excess of the Base Rent.

2. As previously noted, Deferred Rent is the difference between (1) $10,000 in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (2) $21,785 in Base Rent paid to the Port under the current Lease, times the number of calendar months from November 1, 2002 to the Threshold Date, which is the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000. As stated on page 8 of Attachment I, the Port estimates that the Deferred Rent would total approximately $600,984 ($21,784 less $10,000, the proposed monthly rent, or $11,784 X 51 months), based on an estimated Threshold Date of February 1, 2007, which is the latest date that the Threshold Date can occur. The Budget Analyst concurs with these calculations based on the assumption that the Threshold Date occurs on February 1, 2007. If the restaurant revenues exceed $6,000,000 prior to February 1, 2007, the total deferred rent would be less than $600,984 and the Base Rent would be subject to CPI adjustments before February 1, 2007.

3. As noted on page 7 of Attachment I, the Port estimates that total reduced rent to the Port under the proposed Fourth Amendment would be an estimated $2,003,679 for the period from 2003 through 2014, as follows:

- $364,186 in reduced rent, resulting from the reduction in percentage rent by one percentage point from 7 percent to 6 percent for the period from 2003 through 2014.
- $790,756 in reduced rent, resulting from the provision that the Port receives no percentage rent payments above the Base Rent for the period from 2003 through 2006; and
- $848,737 in reduced rent, resulting from the provision that the Port receives only 50 percent instead of 100 percent of the percentage rent due to the Port above the Base Rent for the period from 2007 through 2012.

Based on the Port's assumptions of revenue growth, as shown on pages 10 and 11 of Attachment I, the Budget Analyst concurs with these calculations, that the proposed Fourth Lease Amendment would result

in reduced rental revenue to the Port of $2,003,679. If Bundox is able to pay the Port an estimated $600,984 in Deferred Rent as noted on page 7 of Attachment I, total estimated reduced rent to the Port under the Fourth Amendment would be $1,402,695 ($2,003,679 less $600,984). However, this reduced rent would be partially offset by the Port not having to apply future rent credits to Bundox as explained in Comment No. 4.

4. As noted above, under the 1994 Lease, the Port would apply rent credits to the rent Bundox is to pay to the Port such that Bundox would not pay to the Port the full amount which the Percentage Rent exceeds the Base Rent. Based on actual tenant improvement costs, actual rent credits which could have been granted by the Port to Bundox total $1,638,773. Under the proposed Fourth Amendment, the Port would no longer have to apply rent credits to Bundox for the amount of the Percentage Rent in excess of Base Rent. Page 2 of Attachment I shows that the total rent credits applied to date against rent is $401,655, with the balance of $1,237,118 in rent credits remaining ($1,638,773 less $401,655). Total estimated reduced rental revenues to the Port, therefore, ranges from $165,577, if Bundox pays back to the Port Deferred Rent ($1,402,695 less $1,237,118) to $766,561 if Bundox is not able to pay the Port back the Deferred Rent ($2,003,679 less $1,237,118).

5. Ms. Anderson reports on page 8 of Attachment I that the proposed rent under the Fourth Amendment is comparable to San Francisco market rents. Ms. Anderson states that the Port determined market rents, based on an informal survey of similarly sized "white tablecloth" restaurants in San Francisco. As noted on page 8 of Attachment I, Ms. Anderson states that,

> "the collective opinion by brokers is that the current market rate for a 'white tablecloth' restaurant in the San Francisco Bay Area comparable to the Waterfront would be in the $1.00/s.f. -$2.00/s.f. range, with percentage rent at about 5%."

As noted above, the proposed Fourth Lease Amendment is approximately $1.09 per square foot per month for the Base Rent and six percent of gross revenues under the percentage rent, which is at the low end of the range of $1.00 to $2.00 per square foot cited above to be the market value for base rent. Also, since future CPI adjustments to the Base Rent will not occur until the Threshold date is reached (the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000) the Base Rent is likely to be considerably below market rates over the remaining term of the current lease (through June 30, 2016) and the extended term of the lease under the Fourth Lease Amendment (July 1, 2016 through January 31, 2025).

6. According to Mr. Al Lerma of the MOCD, the Section 108 Loan Program provides loans exceeding $100,000 to businesses that support the economic development initiatives of the City including reducing unemployment and maintaining a diversified economic base. Page 1 of Attachment III provided by Mr. Lerma contains an explanation of why Bundox qualified for a MOCD Section 108 Loan, the purpose of the loan, a description of the loan program, the loan payment terms, and an explanation of the financial reporting requirements under the loan. As noted on Page 3 of Attachment III, MOCD receives periodic financial statements from Bundox.

7. According to Mr. Lerma, MOCD received, the audited financial statements of Bundox for 2001 which showed a net loss by Bundox for the fiscal year from the operation of the Waterfront Restaurant. As explained on page 1 of Attachment IV in a memorandum provided by Mr. Lerma, if Bundox defaults on the Section 108 Loan, then the MOCD would a) have to pay rent to the Port in order to keep the lease in good standing, and b) be required to continue making loan payments to HUD for the outstanding Section 108 loan balance. As further stated on pages 1 and 2 of Attachment IV, the source of funds for such rent payments and loan payments would be from 1) program income generated from MOCD's revolving loan funds, and 2) the annual Community Development Block Grant.

8. According to Mr. Lerma, the MOCD will agree to amend the Loan Agreement to 1) extend the term of the loan period by 13 years, from the current ending date of February 2012 to the ending date of January 31, 2025, thereby reducing the monthly loan payment by $11,105, from $33,000 to $21,895 and 2) reduce the interest rate on the loan from nine percent to six percent. Page 3 of Attachment IV, provided by Mr. Lerma compares the debt service under the Original Loan terms with the debt service under the MOCD Revised Loan terms.

9. According to Ms. Anderson, Bundox began paying reduced Base Rent of $10,000 on November 1, 2002, prior to Board of Supervisors approval, on the expectation that the Board of Supervisors would approve the proposed lease amendment. According to Ms. Patel, Bundox is legally obligated to pay the Port the difference between the current rental rates and rental rates collected since November 1, 2002 if the proposed Fourth Amendment to the Lease is not approved by the Board of Supervisors. The Budget Analyst notes that the Port does not have assurance that any additional rent payments due to the Port by Bundox from November 1, 2002 would be paid if this resolution were not approved by the Board of Supervisors. The Budget Analyst also notes that the proposed legislation does not designate an effective date of November 1, 2002 for the Fourth Amendment. Therefore, the Budget Analyst recommends amending the proposed resolution to include the November 1, 2002 effective date.

10. Under the proposed Fourth Amendment, the Port would receive reduced rent ranging from an estimated minimum of $165,577 to an estimated maximum of $766,561 (see Comment No. 4). However, as noted in Comment 5, the proposed Fourth Lease Amendment is approximately $1.09 per square foot per month for the Base Rent, which is at the low end of the range of $1.00 to $2.00 per square foot cited by the Port as market value for the base rent. Also, since future CPI adjustments to the Base Rent will not occur until the Threshold date is reached (the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000), the Base Rent is

likely to be considerably below market rates over the proposed extended term of the lease which is January 31, 2025 under the subject Fourth Lease Amendment.

11. According to Ms. Anderson, the Port has on occasion entered into agreements for temporary reductions in rent with Port tenants when such tenants face temporary financial difficulties. However, such tenants are then required to reimburse the Port in full, any amounts not paid under such temporary rent reductions. Ms Patel states that, under Appendix B3.581(g) of the City's Charter, the Port has the exclusive authority to administer leases granted by the Port Commission. Ms. Anderson advises that such written payment agreements do not require modifications to the Lease, and are not subject to Board of Supervisors approval since the Port does not waive the right to full rent payments under the terms of the agreements.

12. The Finance and Audits Committee previously requested that the Port provide the Committee with a formal survey of comparable restaurant rents. Attachment V, provided by the Port, is a copy of a report prepared by Clifford Associates, dated May 5, 2003 in response to the Finance and Audits Committee's request to provide comparable restaurant rent data. Regarding the Clifford Associates report, the Budget Analyst notes that the appraisal report points out advantages to both the lessor, the Port, and the tenant, Bundox, from the proposed lease modification and provides comparable leases in Table 1. The appraisal report does not alter the projected loss of revenue to the Port shown in our report or the conclusion that the reduced rent for Bundox is at the low end of the range compared to other restaurant leases and that the rent to be charged by the Port to Bundox will remain at the low end because future rent adjustments based on the CPI will not occur until 2007. Although the Clifford Associates appraisal report states that the proposed base rent of $1.09 per square foot per month is within the range of $1.03 to $2.50 per square foot per month for comparable space, that statement acknowledges that the proposed rent is at the low end of comparable

rents. The reduced percentage rent of six percent of gross receipts, for both food and beverage, which does not become effective until 2007, also is generally lower than the percentage rents shown in the comparable rents on Table 1 of the appraisal.

Advantages of the proposed lease modifications to the Port and to the tenant include:

<u>Advantages to Port</u>

- Remaining Rent Credits for tenant improvements will be waived.
- The Port will not have to find a new tenant for the restaurant space.

<u>Advantages to Tenant</u>

- Significant base rent reductions and percentage rent reductions
- No CPI adjustment until 2007
- No percentage rent until 2007
- Extension of lease by eight years and seven months.

13. Mr. Ken Winters of the Port has provided the Budget Analyst with Attachment VI, a memorandum discussing some of the issues cited in the aforementioned Clifford Associates report. In Attachment VI, Mr. Winters states that, "when viewed as a function of 6% of all gross sales" that the rent to be paid by Bundox under the proposed lease would range from $2.17 per square foot per month (based on gross sales of $4,000,000 in gross sales annually) to $3.26 per square foot per month (based on $6,000,000 in gross sales annually). The Budget Analyst notes that the Waterfront Restaurant reported gross sales of $3,688,560 in calendar year 2002, which would result in a percentage rent of $221,314 annually under the proposed lease modification (six percent of $3,688,560) or $2.01 per square foot per month ($221,314 divided by 12 months divided by 9,189 square feet). However, the Budget Analyst notes that, under the proposed lease modification, the Port receives no percentage rent payments above the Base Rent for the period from 2003 through 2006 and the Port receives only 50

percent, instead of 100 percent, of the percentage rent due to the Port above the Base Rent for the period from 2007 through 2012 (see Comment No. 3).

14. Attachment VI also notes that, under the proposed lease modification, the Port would realize savings because the Port would no longer be required to reimburse Bundox for remaining tenant improvement costs which the Port was liable for under the original lease. By Mr. Winters' calculation, this benefit to the Port effectively doubles the base rent, increasing base rent from $1.09 per square foot per month to $2.18 per square foot per month. However, the Budget Analyst notes that the benefit to the Port of not having to reimburse Bundox for tenant improvement costs is $1,237,118 (see Comment No. 4). This savings to the Port is equivalent to approximately $0.50 per square foot per month under the extended term of the proposed lease modification.[4] When added to the proposed base rent of $1.09 per square foot per month, the total base rent would be $1.59 per square foot per month, which would still be closer to the low end of comparable base rents cited in the Clifford Associates appraisal, of between $1.03 per square foot to $2.50 per square foot as noted in Comment No. 12.

Recommendations: 1. In accordance with Comment No. 9, amend the proposed resolution to include the November 1, 2002 effective date of the Fourth Modification to the Lease.

2. Approval of the proposed resolution, as amended, is a policy matter for the Board of Supervisors.

[4] The proposed lease modification would be effective from November 1, 2002 through January 31, 2025, or 267 months ($1,237,118 divided by 267 months, divided by 9,189 square feet results in $0.50 per square foot per month).

MEMORANDUM

TO: Leanne Nhan, Budget Analyst Office

FROM: Carol Anderson, Port of San Francisco

RE: Waterfront Restaurant Lease Amendment

DATE: April 4, 2003

Below are the Port's responses to the questions posed by you in your emails to Ken Winters.

What is the history of the Waterfront Restaurant at the Port?

The Bundox Restaurant Inc. ("Waterfront") has operated at the same location since 1969 when Al and Cheryl Falchi bought the Pier 7 Café. The restaurant operated until 1973 when it was severely damaged by a fire that destroyed Pier 7. A new building was constructed and, in July 1975, the Waterfront Restaurant reopened at the present location. In 1994, the Port and the Waterfront entered into a new 20-year lease in the form of Port Lease L-11859 (the "Lease").

In 1996, the Falchi's proposed to expand and significantly remodel the Waterfront Restaurant. To fund the proposed capital and tenant improvements, the Falchi's obtained a $3.25 Million loan from the Mayor's Office of Community Development ("MOCD"), referred to as the "MOCD Loan". Approximately $1.4 Million of the MOCD Loan were utilized to build public access improvements required by BCDC. The MOCD Loan also required the Borrower to create and maintain 85 new full-time jobs for City residents.

Because the proposed improvements increased the value of the Port's real estate asset as well as public access on the waterfront, the Port agreed to participate in the capital investment through credits applied against rent payable by the Waterfront. Specifically, the Port agreed to give Waterfront a rent credit, up to a maximum of $1.7 million, or approximately 50% of percentage rent[1] payable in excess of minimum rent. The Port and Falchi's amended the terms of the Lease to reflect this agreement in 1997.

The Waterfront has consistently generated rental income to the Port since 1969. In addition, the restaurant serves as an important anchor tenant at the foot of Broadway and the Embarcadero.

[1] In a typical office lease, the tenant pays rent calculated as a specific dollar amount per each square foot occupied ($/s.f.). In a typical restaurant lease rent is calculated as the greater of a specific dollar amount per each square foot occupied by the restaurant ($/s.f.) *versus* a percentage of gross sales produced on the premises.

What is the current exact square footage of the Waterfront?
The Waterfront now totals 11,894 square feet in dining area, of which 9,189 s.f. is interior dining space which may be used year-round, with an additional 7,359 square feet in public access and parking areas.

What are the net revenues received by the Port as a result of the Lease. from 1997 to the present?

Below, please find a summary of the actual numbers taken from the percentage rent reports for the period 1997-2002 for Bundox. Though I recognize that in some cases the numbers do not add up as you might expect them to, they are the actual numbers per these reports. The numbers below vary slightly from those originally presented to you due to rounding.

Year	Gross Sales	Total % Rent Due to Port	Minimum Rent	Percent Rent Overage Paid to Port	Percent Rent Utilized as Rent Credits to Waterfront
1997	$ 2,795,503	$ 195,685	$ 110,000	$ 87,094	*$61,575
1998	$ 6,258,790	$ 438,115	$ 197,500	$ 144,369	$ 96, 246
1999	$ 6,941,517	$ 485,906	$ 221,498	$ 158,645	$ 105,763
2000	$ 6,628,727	$ 464,011	$ 232,995	$ 138,610	$ 92,406
2001	$ 4,702,050	$ 329,143	$ 232,995	$ 57,689	$ 38,459
2002	$ 3,688,560	$ 258,199	$ 247,206	$ 10,807	$ 7,205
	$31,015,147	$ 2,171,059	$ 1,242,194	$ 597,214	$ 401,655

*Total of Percentage Rent Utilized as Rent Credits from Lease Commencement through 1997, per Port percentage rent records. The rent credit balance totals $1,298,346.

What problem is being addressed by the Lease amendment?
The Falchi's expected to repay the sizeable MOCD Loan undertaken in 1997 for the capital improvements through increased sales resulting from their total renovation of the Waterfront Restaurant. In addition to simply providing more cash flow, the increased sales would enable the Falchi's to utilize the rent credits provided by the Port as its contribution towards the capital improvements. The Falchi's could apply the dollars saved as a result of the rent credits against the monthly MOCD loan payments.

However, the sales projections turned out to be too optimistic. Waterfront's sales began to drop in late 2000 due to the decline in the S.F. Bay Area high-tech market and overall economy. Sales were further negatively impacted by the events of September 11, 2001. Beginning in late 2000 and continuing to today, sales have declined to a point where they are not sufficient to produce any significant percentage rent in excess of minimum rent. As a result of this low level of sales, the Falchi's have been unable to receive rent credits for their capital investments as contemplated by the Lease. Without the expected rent relief and excess cash flow, the Waterfront has found it increasingly difficult, if not impossible, to cover its fixed costs, keep current on Port minimum rent, and to make interest payments on the sizeable MOCD Loan.

Unless the Waterfront is provided immediate and significant economic relief, it will most likely default on the Lease. Such a default would adversely impact both the Port and the City. The Port would be forced to find another operator for the Waterfront, presumably through a bidding process. Whether an operator of an upscale restaurant can be found in this economy is very uncertain.[2] Most likely, the Port would have to offer more favorable terms than those in the Lease, or contemplated in the proposed lease amendment, to attract a new operator in this economy. Even if an operator were found, the process of finding a new operator, negotiating a deal and seeking all approvals of the deal would take many months to complete, during which time the Port would receive absolutely no rental income.

The City would be negatively impacted by a default as well. As noted above, the City, acting through MOCD, loaned the Falchi's $3.25 Million for specified leasehold improvements. The MOCD Loan was secured primarily by a leasehold deed of trust. If the Falchi's default on the loan, the City could seek to foreclose the leasehold deed of trust. However, the Lease would provide little or no economic relief to the City. Given the state of the economy, the City would not be able to find a new operator willing to assume the terms of the existing Lease <u>and</u> pay some or all of the MOCD Loan. Accordingly, MOCD would likely have a relatively small recovery on its loan. This loss of loan funds would directly lower, dollar for dollar, the amount of funds available to MOCD for future economic development loans (and result in a concomitant loss of future jobs that would have been created by these loans).

<u>What is the solution to the problem?</u>
The solution to the problem is to prevent the Waterfront from defaulting on the Lease and MOCD Loan and enable it to continue as an economically viable, long-term tenant of the Port and the community of San Francisco. Towards this goal, MOCD and the Port have negotiated with the Waterfront a comprehensive restructuring of the MOCD Loan and Lease. This restructuring is necessary to enhance the Waterfront's cash flow, which will in turn enable the Waterfront to continue repaying the MOCD Loan and rent to the Port.

The proposed Lease restructuring is predicated on a cash flow model that fits within the projected operations of the Waterfront. Essentially, it provides the Waterfront approximately four years of "breathing room" to get back on its feet, as described below.

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[2] In fact, given the current restaurant rental market, the Port believes that no viable substitute tenant for the Waterfront will be found in the foreseeable future. The failure rate of "white table" restaurants in San Francisco is at an all time high and finding replacement tenants in this market is extremely difficult, if not impossible. According to Golden Gate Restaurant Association, the San Francisco restaurant industry lost approximately 14% (annualized) of its restaurants during 2001. This would total approximately 450 restaurants out of a total of 4200 restaurants. As example of this, the Port is in the process of executing a lease assignment at Pier 33 north for a high end restaurant space for 6,772 s.f., minimum rent of $1.04/s.f., percentage rent of 5% for year 1, 6% for year 2 and 7% for year 3 and thereafter. A restaurant space at Pier 33 south, though vastly inferior to the Waterfront, has been vacant for over a year, and totals approximately 4,865 s.f.. This space is under lease to a master tenant who has been attempting to sublease the restaurant at $6,000 per month, or $1.25/s.f., with no percentage rent, and to date has been unsuccessful at leasing the space.

While a more detailed description of the Lease amendment terms is provided further below, the general terms of the Lease modification are as follows:

(1) Extension of the term of the Lease from August 30, 2016 to February 1, 2025;
(2) Reduction of the base rent from $21,784 to $10,000 per month;
(3) Reduction of the percentage rent from 7 percent to 6 percent;
(4) Application of a portion of the percentage rent payable to the Port instead to the MOCD Loan as accelerated principal paydown for a certain time period; and
(5) Participation by the Port in refinance or sales proceeds.

The MOCD Loan amendment is not subject to Board of Supervisors approval. However, the general terms of this amendment are as follows:

(1) Reduction of the interest rate from 9 percent to 6 percent; and
(2) Extension of the loan term and amortization schedule to January 31, 2025, thereby reducing loan payments from approximately $33,000 to $21,895 per month.

Description and Analyses of Lease Amendment Terms

Term:
The Port will extend the term of the lease to January 31, 2025.[3] A 20+ year lease term increases the value and desirability of the Waterfront with regard to a potential sale or refinance, due to the ability of a purchaser to amortize its investment over a commercially reasonable period of time. Creating such increased value is important to the City and Port because it would better enable the City to recover the MOCD loan funds and the Port an opportunity to recapture its "deferred rent" (as explained below).

Monthly Base Rent:
Commencing on November 1, 2002 and continuing throughout the Term, the Waterfront agrees to pay a monthly base rent of Ten Thousand Dollars ($10,000.00). After the Threshold Date, the base rent will be adjusted in direct proportion to the percentage increase in the Consumer Price Index (CPI). The Threshold Date is the earlier of (a) the first day of the calendar month following the date when gross receipts exceed Six Million Dollars ($6,000,000) in a Fiscal Year, or (b) February 1, 2007.

Deferred Rent:
The Port has subordinated a certain amount of rent as a result of Waterfront's current level of sales revenues and the anticipated time Waterfront will need to emerge from its current economic situation.

"Deferred Rent" is the difference between (i) $10,000 (base rent paid by the Waterfront from November 1, 2002 to the Threshold Date); and (ii) $21,784.79, (the base rent under the current Lease) times the number of calendar months from November 1, 2002 to the Threshold Date. The Port estimates the Deferred Rent to total $600,984, based on a

[3] The Lease extension of approximately 9 years coincides with the MOCD loan extension, so that both the Lease and MOCD Loan will have co-terminus expiration date.

Threshold Date of February 1, 2007 ($11,784.79 X 51 months). Deferred Rent will be repaid to the Port at the end of the Lease term or when and if there is a sale of the Waterfront Restaurant to the extent excess sale proceeds exist after repayment of the MOCD loan.

Percentage Rent:
Waterfront agrees to pay percentage rent to Port in the amount of six percent (6%) of gross receipts. Percentage Rent due each month is limited to the amount such percentage rent exceeds the base rent for said month—in no event will total rent to the Port exceed 6% of gross sales revenues. The following outlines how the Percentage Rent will be payable during the term of the Lease.

1. Commencing from November 1, 2002 to the Threshold Date, Waterfront's obligation to pay percentage rent will be subordinate to the payment of its operating expenses. That is, Waterfront will not have to pay any monthly percentage rent if its expenses exceed its income. But, to the extent Waterfront generates a net operating income in any month, Waterfront must pay 50% of that net operating income to MOCD as additional principal debt reduction of the MOCD Loan in lieu of paying percentage rent to the Port.[4] Waterfront will be entitled to retain the remaining 50% of NOI. This recovery period is designed to provide the flexibility to Waterfront to cover current expenses during the critical next four years.

2. For the period commencing from the Threshold Date to January 31, 2012, Waterfront will make monthly payments of percentage rent based upon its gross receipts (without regard to the its operating expenses). During this period, Waterfront will owe the Port the greater of base rent or 6% of gross sales. However, the Port will require Waterfront to pay 50% of the overage amount (i.e., the difference between 6% of gross sales and base rent) as principal debt reduction of the MOCD Loan. This overage amount is expected to reduce the MOCD principal amount additionally by approximately $765,000. This will significantly shorten the time necessary to pay down the MOCD loan, which is amortized over 20 years per the proposed modification.

3. For the period commencing from February 1, 2012 and continuing for the remainder of the Term, Waterfront will owe the Port the greater of base rent or 6% of gross sales, with no portion of such amount paid to MOCD.

Deletion of Improvement Credits:
The concept of rent credits for improvements made to the premises by Waterfront will be deleted in its entirety. As explained above, rent credits were structured into the Lease to reflect that portion of the capital and tenant improvements adding public access and value

[4] The maximum amount of NOI Waterfront would have to pay to MOCD would be the amount that would otherwise be due under percentage rent as calculated based on gross receipts (i.e., 6% of gross receipts, less base rent).

to the Port's asset. However, because of the low sales, the Waterfront was not able to utilize most of these rent credits.

The restructured Lease provides Waterfront a more immediate and direct means of receiving credit for its capital improvements than the original rent credit approach. As explained above, the base rent has been reduced by $11,784.79/month and the percentage rent from 7% to 6%/month for the life of the Lease term. In addition, the Port receives no percentage rent payments until the Threshold Date, After the Threshold Date until January 31, 2012, the Port will share 50% of the percentage rent payments with MOCD. Overall, the above modifications enable Waterfront to fully recapture the $1.7 million originally contemplated in the Lease, and are based on Waterfront Restaurant sales projections.

Payments Upon Transfer of Lease and Refinancing of Debt:
Waterfront agrees that if, at any time during the Term, the Waterfront transfers this Lease in connection with a sale of the restaurant business or any of the assets of the restaurant business, the net proceeds will be distributed as in a priority order. First, the proceeds will be used to pay off the balance of the MOCD loan. Next, the proceeds will go to pay the Port Deferred Rent. The remainder of the proceeds, if any, will be shared equally by the Port and Waterfront. As well, the Port would have opportunity to renegotiate new lease rates with a new owner after a year. The year-long time interval provides the Port the time to understand the business and realistically project performance of the new owner/operator so as to obtain the most favorable terms to the Port when it re-negotiates the new lease rates.

What are safeguards for the future?
Waterfront will be required to follow and implement the recommendations of a consultant, retained under contract with the San Francisco Small Business Development Center, who is currently performing a review of the Waterfront's operations with the goal of increasing the profitability of the restaurant. The Port has also required that the Waterfront provide annual financial statements, including profit and loss and balance sheet, at the end of each fiscal year prepared by an independent accountant and certified by the tenant as fairly representing tenant's financial condition. In addition, the Port will continue to have the default remedies under the lease so if Waterfront fails to perform, Port can pursue such remedies.

What is the estimated total reduction in revenue to Port as result of reduction in percentage rent?
Sales and expense projections provided by the Waterfront through 2007 were utilized to analyze cashflow during the lease. The Port extended these projections utilizing a 3% growth rate through 2014, acknowledging that even extending projections this far out is not very useful, as many variables come into play that influence performance. However, utilizing figures per the attached spreadsheets and per the proposed structure, for the period 2003 – 2014, the difference in percentage rent is estimated as follows:

Total Percentage Rent at 7%:	$ 3,389,308
Total Percentage Rent at 6%:	$ 3.025.122
Difference/Reduction Estimated in Rent to Port:	$ 364,186

As discussed above, the current market rate for percentage rent for a restaurant the size of the Waterfront is in the 5%-6% range.

What is the estimated total reduction in revenue to Port as result of reduction in rent?
The estimated total reduction in revenue to the Port for the period projected from 2003-2014 as a result of a reduction in the rent consists of four categories as follows:

(1) Deferred Rent: The Port has subordinated a certain amount of rent as a result of Waterfront's current level of sales revenues and the anticipated time Waterfront will need to emerge from its current economic situation. "Deferred Rent" is estimated to total $600,984. However it must be noted that this amount may be repaid to the Port per the structure when and if the Waterfront sells the restaurant, by utilizing net sale proceeds remaining after total repayment of the MOCD loan.

(2) Per the proposed structure, as discussed above, the revenue lost to the Port resulting from the difference of percentage rent of 7% and 6 % for this time period totals $364,186.

(3) Per the proposed structure, the Port's percentage rent overage over minimum rent is subordinate to the Waterfront's NOI. Therefore, the Port will forego approximately four years (2003-2006) of percentage rent. Per the attached spreadsheet, calculating percentage rent at the proposed 6%, this amount totals $790,756.

(4) Per the proposed structure, 50% of the percentage rent due to the Port from the Threshold Date (estimated at February 1, 2007) through 2012 is to be paid instead as priority principal repayment to MOCD. Per the attached spreadsheet, calculating percentage rent at the proposed 6%, this amount totals $ 848,737.

Therefore, assuming deferred rent is paid back, the potential revenue concession made by the Port during this period would be $1.4 Million. If deferred rent is not collectible, this concession would increase to potentially $2 Million.

Note that during this period, the reduction in minimum rent is irrelevant because sales are high enough to place the lease in percentage rent.

What is the estimated "deferred rent" between November 1. 2002 and Threshold Date?
The Lease amendment provides that Deferred Rent stops accruing the earlier to occur of February 1, 2007 or the date when Waterfront's sales reach $6 million. The Port cannot predict with certainty when Waterfront's sales will increase to $6 million, and therefore has utilized the date of February 1, 2007. Given this, the maximum "deferred rent" will equal $600,984 ($11,784.79 X 51 months).

Provide a list of other Port/City restaurant leases with similar NOI provisions:
There are no other Port restaurant leases which provide that percentage rent is subordinate to Net Operating Income. This provision was structured into the deal because of the need to provide immediate temporary relief to the Waterfront. Note that this is available only for the period November 1, 2002 until the Threshold Date, estimated at the outside at February 1, 2007.

Provide further explanation of transfer language re "...any unpaid Deferred Rent forgiven in event of an approved sale":
Deferred rent is to be repaid only from net profits remaining upon sale of the restaurant. As explained above: First, net proceeds of a sale or refinance will first go to pay any unpaid balance remaining on the MOCD Loan; Second, should any funds remain, they will then go towards repayment to the Port of any Deferred Rent accrued between November 1, 2002 and the Threshold date, estimated at approximately $600,984. In the event the Falchi's are unable to sell the Waterfront at a sufficiently high price to pay both the MOCD and Deferred Rent, any unpaid Deferred Rent will be forgiven by the Port and the new assignee of the Lease will not be obligated to pay any such remaining amount. The Port reserves the right to consent to a sale. In the event of a refinance, however, should such a refinance not produce sufficient proceeds to pay off the deferred rent, this balance will be carried forward.

The Proposed Lease is at Current Market
As discussed in the April 4^{th} memo, the Port believes that proposed lease rates are comparable to the current San Francisco restaurant market. The proposal reflects rents typical of a restaurant of Waterfront's size, large relative to most, and quality, operating in today's economic climate. No new restaurant leases have been executed for a number of years in San Francisco for restaurants comparable in size and quality to the Waterfront. However, the collective opinion by brokers is that the current market rate for a "white tablecloth" restaurant in the San Francisco Bay Area comparable to the Waterfront would be in the $1.00/s.f. -$2.00/s.f. range, with percentage rent at about 5%. According to brokers, percentage rents from 5% on the low side to 7% at the absolute highest, are the range in which restaurants can afford to pay rent and stay in business.

Informal restaurant "comparables" as from various brokers include Boulevard Restaurant at Mission/Embarcadero, which reportedly grosses $8 million annually, has a minimum base rent $2.00-$3.00/s.f. and percentage rent between 5% and 6%, and One Market Restaurant which reportedly has a minimum base of approximately $2.00/s.f., and percentage rent of 5%. Max's Café near PacBell Park recently closed due to the economic climate, and reportedly totaled 12,000-13,000 s.f. with a rental rate of $2.00/s.f.

The proposed rates for the Waterfront restaurant are well within the range of rates as discussed above. Waterfront's minimum rent per square foot when calculated ranges from $1.08/s.f. based on the interior dining area of 9,189 s.f. which is utilized year round, down to $.84/s.f., when the two out door dining areas, totaling an additional 2,705 s.f., are added to the calculation. The percentage rent of 6% is mid-range of the generally accepted range for restaurant rents

	Minimum Rent	Percentage Rent
Current S.F. Market Rent:	1.00/s.f.-$1.50/s.f.	5%-6% of gross sales
Proposed Waterfront Rent:	$.84/s.f. - 1.09/s.f.	6% of gross sales
Current Waterfront Rent:	$1.78/s.f.	7% of gross sales

WATERFRONT

Projected @ 5 % Growth	2003	2004	2005	2006	2007	2008
GROSS REVENUES	$ 4,825,443	$ 5,305,787	$ 5,395,151	$ 5,652,891	$ 5,923,518	$ 6,219,694
OPERATING EXPENSES						
Total Cost of Sales	$ 1,287,242	$ 1,415,966	$ 1,437,948	$ 1,509,845	$ 1,585,337	$ 1,632,897
Total Cost Of Labor	$ 1,720,552	$ 1,892,607	$ 1,918,250	$ 2,014,163	$ 2,114,871	$ 2,178,317
Operating / General Expenses	$ 1,135,409	$ 1,186,008	$ 1,216,104	$ 1,257,240	$ 1,299,887	$ 1,338,884
Taxes	$ 39,320	$ 43,252	$ 43,826	$ 46,017	$ 48,318	$ 50,818
Interest	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447
Bank Cards & Other Discounts	$ 157,757	$ 162,499	$ 167,374	$ 172,395	$ 177,567	$ 182,894
FTB Minimum Annual Tax	$ 800	$ 800	$ 800	$ 800	$ 800	$ 800
Total Operating Expenses	$ 4,449,528	$ 4,809,579	$ 4,892,749	$ 5,108,907	$ 5,335,228	$ 5,493,058
Port Percentage Rent 6%	$ 289,527	$ 318,347	$ 323,709	$ 339,173	$ 355,411	$ 373,182
PORT Minimum Rent Payment	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000
Percentage Rent Overage	$ 169,527	$ 198,347	$ 203,709	$ 219,173	$ 235,411	$ 253,182
MOCD Loan Payment	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735
Total Lease/Loan Expenses	$ 382,735	$ 382,735	$ 382,735	$ 382,735	$ 618,146	$ 635,917
NET OPERATING INCOME	$ (6,820)	$ 113,473	$ 119,667	$ 161,249	$ (29,856)	$ 90,719
NOI Distribution						
MOCD as Addl Principal Paydown	$ -	$ 56,736	$ 59,833	$ 80,624	$ -	$ -
Waterfront as Cushion	$ -	$ 56,736	$ 59,833	$ 80,624	$ -	
Percentage Rent Overage Distribution						
Total Percent Rent Overage	N/A	N/A	N/A	N/A	$ 235,411	$ 253,182
Overage to MOCD (Addl Prin. Paydown)	$ -	$ -	$ -	$ -	$ 117,706	$ 126,591
Overage to PORT	$ -	$ -	$ -	$ -	$ 117,706	$ 126,591

2009	2010	2011	2012	2013	2014	
$ 6,530,679	$ 6,857,213	$ 7,200,073	$ 7,560,077	$ 7,938,081	$ 8,334,985	
$ 1,681,884	$ 1,732,341	$ 1,784,311	$ 1,837,840	$ 1,892,976	$ 1,949,765	
$ 2,243,667	$ 2,310,977	$ 2,380,306	$ 2,451,715	$ 2,525,266	$ 2,601,024	
$ 1,379,051	$ 1,420,422	$ 1,463,035	$ 1,506,926	$ 1,552,134	$ 1,598,698	
$ 53,318	$ 55,818	$ 58,318	$ 60,818	$ 63,318	$ 65,818	
$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	
$ 188,381	$ 194,032	$ 199,853	$ 205,849	$ 212,024	$ 218,385	
$ 800	$ 800	$ 800	$ 800	$ 800	$ 800	
$ 5,655,548	$ 5,822,837	$ 5,995,070	$ 6,172,395	$ 6,354,965	$ 6,542,937	
$ 391,841	$ 411,433	$ 432,004	$ 453,605	$ 476,285	$ 500,099	
$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 1,440,000
$ 271,841	$ 291,433	$ 312,004	$ 333,605	$ 356,285	$ 380,099	
$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	
$ 654,576	$ 674,168	$ 694,739	$ 716,340	$ 739,020	$ 762,834	
$ 220,555	$ 360,208	$ 510,263	$ 671,342	$ 844,095	$ 1,029,213	
$ -	$ -	$ -	$ -	$ -	$ -	
$ 271,841	$ 291,433	$ 312,004	$ 333,605	$ 356,285	$ 380,099	
$ 135,920	$ 145,716	$ 156,002	$ 166,802	$ -	$ -	
$ 135,920	$ 145,716	$ 156,002	$ 166,802	$ 356,285	$ 380,099	$ 1,585,122
						$ 3,025,122

BUNDOX (WATERFRONT RESTAURANT LEASE AMENDMENT COMPARISON

ORIGINAL LEASE L-11859

Background:	Bundox had been a tenant at Pier 7/1/2 since 1969. Bundox Requested a new lease with a proposed business plan for restaurant renovation and expansion requiring significant capital investment.
Date of Lease:	December 20, 1994.
Port Commission Approval:	Resolution No. 94-133 October 25, 1994
Board of Supervisor Approval:	Resolution No: 1035-94 File No: 65-94-17 Ordinance No. 412-94 December 19, 1994
Premises:	Restaurant: 9,650 s.f.; Parking: 2,828 s.f.; Outdoor Patio/Public Access: 8,668 s.f.
Lease Term:	20 Years, to Commence as of "Commencement Date" or by 7/30/92, or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms, and (v) receipt of Port Building Permit for Phase I.
Percentage Rent:	7% of Gross Receipts
Minimum Base Rent:	$5,000/mo until Phase I TI's done during time restaurant closed and under construction for a maximum of 9 months; then $17,500/mo, with CPI increase every 3 years.

Tenant Improvements:	Per Plant Construction Preliminary Construction Estimate, September 10, 1993, partially modified March 23, 1994. Note this estimate did not include other costs associated with the overall renovation, such as furniture, fixtures, and equipment, as well as additional soft costs. Phase I Improvements: Budget: \$1.875 Million. Building area expansion and improvements to the second floor of the building Phase II Improvements: Budget \$1.055 Million. Outside of building. Demolition of finger pier and construction of replacement pier; construction of two outdoor eating areas, one valet parking area, and new public access walkway along water.
Rent Credits from Port:	Allowable at 50% of Certified Costs by Waterfront: Phase I: Maximum Rent Credits, \$1 million Phase II: Maximum \$700,000; Rent Credits returned to Waterfront at rate of 40% of the Percentage Rent due to Port in excess of Minimum Base Rent.
Financing:	None described in lease. However, Commencement Date contingent on Waterfront obtaining financing of TI's at commercially reasonable terms for Phase I improvements.
Other:	Affirmative Action Plan required per lease.
Comments:	Lease was Void as Waterfront did not fulfill requirement for Lease Commencement. Commercially reasonable financing for TI's not obtained, therefore no building permit was issued by the Port. However, Waterfront was still in possession and continued to pursue financing.

REAFFIRMATION AND AMEND. TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	Once Lease became Void as of 7/1/95, Bundox asked the Port to reaffirm the Lease, extend the time for Bundox to obtain financing until June 30, 1996, to include certain modifications to the Lease and to consent to encumbrance of the leasehold by Bundox's proposed lenders. In early 1996, Bundox entered into negotiations for financing with Bank of America and the Small Business Administration. In June 1996, Bundox's negotiations with B of A and SBA stalled and Bundox entered into negotiations with Heller First Capital. The Reaffirmation was modified to replace BofA and SBA with Heller First Capital and the SF Mayor's Office of Community Development (MOCD). Heller provided the Port with satisfactory proof of a loan commitment to satisfy the Lease condition and the Lease went into effect July 1, 1996.
Date of Amendment:	June 28,1996
Port Commission Approval:	Resolution No: 96-15 February 27, 1996
Board of Supervisor Approval:	File No: 65-96-10 Ordinance No: 261-96 June 24, 1996
Lease Term:	Commencement Date or June 30, 1996, or Lease is Void. Term up to 22 years if Phase I/II done at same time; Term of 20 years at completion of Phase I TI's or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms as evidenced by a commitment letter of loan authorization issued by a qualified lender.
Financing:	Preliminary Approval of Heller First Capital ("Heller") and the MOCD as approved "Lenders".

Encumbrance:	Consent to the encumbrance of Bundox's Leasehold by lenders through a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor of both Heller, for a note not to exceed $1.25 Million, and MOCD, with a note not to exceed $2.0 Million.
Lease Amendments regarding Security Interests of Lender:	If Lease terminates for any reason or is rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, lender has the right to enter into a new lease on the same terms and conditions if they have remedied any monetary defaults; Lenders can assign the lease without the Port's consent in connection with lender's security documents if such assignment is by judicial or non-judicial foreclosure or deed in lieu of foreclosure, and any other assignments to a third party at a foreclosure sale must be approved by the Port; Lenders must consent to any voluntary surrender of the Lease; disposition of any insurance proceeds in case of loss, any eminent domain or condemnation awards or damages payable under the lease shall be first made to lenders as to their deeds of trust, and the Port waives the right to obtain a lien on any thing that may constitute a part of the fixtures on the Premises during the term of the loans.

AMENDMENT NO. 2 TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	The lease went into effect on July 1, 1996 as a result of Heller First Capital providing satisfactory proof of a loan commitment. Although Heller had conditionally agreed to provide financing for the project, Bundox was able to obtain more favorable financing terms from MOCD. As a condition to providing the financing, MOCD requested the Port to consent to the encumbrance of the Lease. As well, the Reaffirmation was modified to delete provisions that were previously negotiated to suit the requirements of prior potential lenders. This amendment does not add any new provisions that had not been previously approved by the Port Commission and Board of Supervisors. Its purpose is to remove Heller as lender and consent to MOCD as lender, and to make non-substantial clerical corrections to the previous Reaffirmation and Amendment.
Date of Amendment:	November 13, 1996
Port Commission Approval:	Resolution No. 96-117 November 12, 1996
Financing and Encumbrance:	Approval of MOCD as lender and Consent to the encumbrance of Bundox's Leasehold by a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor MOCD, with a note not to exceed $3.25 Million.
Security Interests of Lender:	Substantially the same as provided for above.

AMENDMENT NO. 3 TO LEASE

Background:	Construction of the Waterfront Restaurant redevelopment project commenced May 1, 1997.
Date of Amendment:	July 22, 1997
Port Commission Approval:	Resolution No. 97-70 July 22, 1997
Minimum Base Rent:	Bundox requested an amendment to the Lease to provide that Minimum Base Rent of $5,000/mo during the construction period be allowed in the event Bundox kept the restaurant open during construction. Bundox wanted to keep the restaurant open during construction to retain employees and customers, but requested lower minimum rent due to limited sales volume expected in conjunction with relatively high operating costs.
Premises:	Restaurant: 11,184 s.f.; Parking: 4,153 s.f.; Outdoor Patio/Public Access: 6,608 s.f.
Premises/BCDC Public Access Improvements:	BCDC required that public access improvements be made in areas adjacent to Bundox premises resulting in modifications in the size and location of public access improvements
Tenant Improvements:	Phase II Improvements were modified to delete the construction of replacement pier and modification of the public access walkway along the waters' edge.

BUNDOX (WATERFRONT RESTAURANT LEASE AMENDMENT COMPARISON

ORIGINAL LEASE L-11859

Background:	Bundox had been a tenant at Pier 7/1/2 since 1969. Bundox Requested a new lease with a proposed business plan for restaurant renovation and expansion requiring significant capital investment.
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Port Commission Approval:	Resolution No. 94-133 October 25, 1994
Board of Supervisor Approval:	Resolution No: 1035-94 File No: 65-94-17 Ordinance No. 412-94 December 19, 1994
Premises:	Restaurant: 9,650 s.f.; Parking: 2,828 s.f.; Outdoor Patio/Public Access: 8,668 s.f.
Lease Term:	20 Years, to Commence as of "Commencement Date" or by 7/30/92, or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms, and (v) receipt of Port Building Permit for Phase I.
Percentage Rent:	7% of Gross Receipts
Minimum Base Rent:	$5,000/mo until Phase I TI's done during time restaurant closed and under construction for a maximum of 9 months; then $17,500/mo, with CPI increase every 3 years.

Tenant Improvements:	Per Plant Construction Preliminary Construction Estimate, September 10, 1993, partially modified March 23, 1994. Note this estimate did not include other costs associated with the overall renovation, such as furniture, fixtures, and equipment, as well as additional soft costs. Phase I Improvements: Budget: $1.875 Million. Building area expansion and improvements to the second floor of the building Phase II Improvements: Budget $1.055 Million. Outside of building. Demolition of finger pier and construction of replacement pier; construction of two outdoor eating areas, one valet parking area, and new public access walkway along water.
Rent Credits from Port:	Allowable at 50% of Certified Costs by Waterfront: Phase I: Maximum Rent Credits, $1 million Phase II: Maximum $700,000; Rent Credits returned to Waterfront at rate of 40% of the Percentage Rent due to Port in excess of Minimum Base Rent.
Financing:	None described in lease. However, Commencement Date contingent on Waterfront obtaining financing of TI's at commercially reasonable terms for Phase I improvements.
Other:	Affirmative Action Plan required per lease.
Comments:	Lease was Void as Waterfront did not fulfill requirement for Lease Commencement. Commercially reasonable financing for TI's not obtained, therefore no building permit was issued by the Port. However, Waterfront was still in possession and continued to pursue financing.

REAFFIRMATION AND AMEND. TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	Once Lease became Void as of 7/1/95, Bundox asked the Port to reaffirm the Lease, extend the time for Bundox to obtain financing until June 30, 1996, to include certain modifications to the Lease and to consent to encumbrance of the leasehold by Bundox's proposed lenders. In early 1996, Bundox entered into negotiations for financing with Bank of America and the Small Business Administration. In June 1996, Bundox's negotiations with B of A and SBA stalled and Bundox entered into negotiations with Heller First Capital. The Reaffirmation was modified to replace BofA and SBA with Heller First Capital and the SF Mayor's Office of Community Development (MOCD). Heller provided the Port with satisfactory proof of a loan commitment to satisfy the Lease condition and the Lease went into effect July 1, 1996.
Date of Amendment:	June 28,1996
Port Commission Approval:	Resolution No: 96-15 February 27, 1996
Board of Supervisor Approval:	File No: 65-96-10 Ordinance No: 261-96 June 24, 1996
Lease Term:	Commencement Date or June 30, 1996, or Lease is Void. Term up to 22 years if Phase I/II done at same time; Term of 20 years at completion of Phase I TI's or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms as evidenced by a commitment letter of loan authorization issued by a qualified lender.
Financing:	Preliminary Approval of Heller First Capital ("Heller") and the MOCD as approved "Lenders".

Encumbrance:	Consent to the encumbrance of Bundox's Leasehold by lenders through a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor of both Heller, for a note not to exceed $1.25 Million, and MOCD, with a note not to exceed $2.0 Million.
Lease Amendments regarding Security Interests of Lender:	If Lease terminates for any reason or is rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, lender has the right to enter into a new lease on the same terms and conditions if they have remedied any monetary defaults; Lenders can assign the lease without the Port's consent in connection with lender's security documents if such assignment is by judicial or non-judicial foreclosure or deed in lieu of foreclosure, and any other assignments to a third party at a foreclosure sale must be approved by the Port; Lenders must consent to any voluntary surrender of the Lease; disposition of any insurance proceeds in case of loss, any eminent domain or condemnation awards or damages payable under the lease shall be first made to lenders as to their deeds of trust, and the Port waives the right to obtain a lien on any thing that may constitute a part of the fixtures on the Premises during the term of the loans.

AMENDMENT NO. 2 TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	The lease went into effect on July 1, 1996 as a result of Heller First Capital providing satisfactory proof of a loan commitment. Although Heller had conditionally agreed to provide financing for the project, Bundox was able to obtain more favorable financing terms from MOCD. As a condition to providing the financing, MOCD requested the Port to consent to the encumbrance of the Lease. As well, the Reaffirmation was modified to delete provisions that were previously negotiated to suit the requirements of prior potential lenders. This amendment does not add any new provisions that had not been previously approved by the Port Commission and Board of Supervisors. Its purpose is to remove Heller as lender and consent to MOCD as lender, and to make non-substantial clerical corrections to the previous Reaffirmation and Amendment.
Date of Amendment:	November 13, 1996
Port Commission Approval:	Resolution No. 96-117 November 12, 1996
Financing and Encumbrance:	Approval of MOCD as lender and Consent to the encumbrance of Bundox's Leasehold by a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor MOCD, with a note not to exceed $3.25 Million.
Security Interests of Lender:	Substantially the same as provided for above.

AMENDMENT NO. 3 TO LEASE

Background:	Construction of the Waterfront Restaurant redevelopment project commenced May 1, 1997.
Date of Amendment:	July 22, 1997
Port Commission Approval:	Resolution No. 97-70 July 22, 1997
Minimum Base Rent:	Bundox requested an amendment to the Lease to provide that Minimum Base Rent of $5,000/mo during the construction period be allowed in the event Bundox kept the restaurant open during construction. Bundox wanted to keep the restaurant open during construction to retain employees and customers, but requested lower minimum rent due to limited sales volume expected in conjunction with relatively high operating costs.
Premises:	Restaurant: 11,184 s.f.; Parking: 4,153 s.f.; Outdoor Patio/Public Access: 6,608 s.f.
Premises/BCDC Public Access Improvements:	BCDC required that public access improvements be made in areas adjacent to Bundox premises resulting in modifications in the size and location of public access improvements
Tenant Improvements:	Phase II Improvements were modified to delete the construction of replacement pier and modification of the public access walkway along the waters' edge.

MAYOR'S OFFICE OF COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO

WILLIE LEWIS BROWN, JR.
MAYOR

ROGER SANDERS
DIRECTOR

DATE: March 25, 2003

TO: Leanne Nhan, Budget Analyst

FROM: Al Lerma, Program Director

RE: Bundox, Inc. dba The Waterfront Restaurant

Below are responses to your questions regarding Bundox, Inc. dba The Waterfront Restaurant –

1. Why did Bundox Restaurant, Inc. qualify for an MOCD loan?

   After the Loma Prieta quake in 1989 and the collapse of the freeway along the Embarcadero the Port and the City began an effort to revitalize the San Francisco waterfront to expand business, tourism and recreational opportunities. The Waterfront Restaurant has been located along the Embarcadero for 31 years. The business had an opportunity to renovate and expand their restaurant with support from the Port of San Francisco and the MOCD. The Section 108 loan program as described below was an economic development loan program intended to support such efforts to revitalize and expand business opportunities in areas targeted for development such as the Embarcadero corridor.

   The request from The Waterfront Restaurant at the time represented an opportunity to help launch revitalization efforts along the Embarcadero and to encourage other businesses to invest along the Embarcadero. The project provided an opportunity to create and retain jobs and to improve and expand the business at its existing location. Since then there have been a number of other improvements (Renovation of the Ferry Building, the Extension of the Muni Light Rail to Pier 39, and the opening of Pac Bell Park) that have helped to reshape and revitalize the San Francisco waterfront. The Waterfront loan request met all of the job creation and underwriting requirements at MOCD and was recommended for funding in late 1995 and an approved loan agreement was signed in November 1996.

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2. **What was the purpose of the loan?**

The purpose of the HUD Section 108 business loan was to pay for the following uses for The Waterfront Restaurant renovation project:

Leasehold improvements	$ 2,347,248
Furniture, Fixtures & Equipment	$ 485,000
Interest Reserve	$ 170,000
Debt Repayment	$ 200,000
Working Capital	$ 47,752
	$ 3,250,000

3. **Describe the MOCD loan program?**

San Francisco Mayor's Office of Community Development offers three loan programs to stimulate economic development and assist small businesses. These loan programs are distinguished primarily by loan size.

- **Micro-Enterprise Revolving Loan Program** - providing loans up to $25,000 to support micro-enterprise and self employment efforts of low and moderate income San Franciscans interested in starting or expanding their own small businesses. A Micro-enterprise is defined as a business that has five or less employees. Applicants should demonstrate experience in the business for which the loan is requested and exhibit a source of repayment of the loan.

- **Small Business Revolving Loan Fund** - providing existing small businesses with loans up to $100,000* (loans may exceed this amount if business demonstrates significant economic impact) which can be used for a number of purposes, including working capital, equipment purchase, and other business expansion activities.

- **Section 108 Loan Program** - for loans exceeding $100,000 to businesses identified as consistent with and supporting specific economic development initiatives of the City. The primary strategy of the Section 108 economic development program is to support the goals of the City's overall economic development efforts. These efforts include:

    a.) reducing unemployment and under-employment through job training and expansion of employment and job opportunities;
    b.) maintaining a vital, balanced and diversified economic base that provides job opportunities for a highly diverse labor force;

The Bundox dba The Waterfront Restaurant loan was made under the Section 108 loan program. The Section 108 Loan Program is funded by funds from the US Department of Housing & Urban Development (US-HUD).

4. **What was the loan payment schedule under the 9 percent interest rate, and under the 6 percent interest rate?**

Original Loan Payment Terms:
Loan Amount: $ 3,250,000
Interest Rate: 9%
Term: 17 Years
Monthly Payment: $ 31,161

Proposed Revised Loan Terms:
Interest Rate: 6%
Term: Extended through Feb. 2025 to coincide with SF Port proposed lease term
Monthly Payment: $ 22,429

The MOCD is working with a business consultant from the SF Small Business Development Center to provide technical assistance to The Waterfront Restaurant during this downturn in our local and national economy. The revised loan terms are based on a detailed review of The Waterfront's business operations by this office with the goal of providing some recommendations to improve and strengthen the business operations of The Waterfront Restaurant going forward. This will help to preserve a long time San Francisco business as well as the approximately 89 jobs of its employees.

5. **Is the business required to be audited or required to produce audited financial statements under the loan? If so, what where the results?**

The Bundox, Inc. provides annual year end business tax returns to MOCD which are reviewed by our staff. In addition, periodic financial statements are provided and reviewed as requested. The business also provides to MOCD copies of the State of California Board of Equalization audit done every two years under California Sales and Use Tax Law.

During the audit term from 4/1/96 – 03/31/99 the business was required to pay $ 30,819 in taxes under a settlement agreement related to revisions in the tax law at the time regarding gratuities charged by restaurants. The business appealed the determination but was unsuccessful and was required to pay the back taxes. As a result The Waterfront Restaurant revised their internal policy to assess the appropriate taxes on gratuities to comply with the Board of Equalization audit findings.

During the audit term from 7/1/99 – 6/30/02 no significant findings were identified by the Board of Equalization's audit review for Bundox, Inc. dba The Waterfront Restaurant.

Bundox, Inc. has experienced a significant decline in revenue since the year 2001 and has been unable to meet the debt service on their MOCD loan since October 2001. While they are delinquent on their loan payments, Bundox, Inc. has been working closely with a restaurant consultant provided by MOCD through the Small Business Development Center. The consultant is assisting Bundox, Inc. in identifying ways to cut costs and generate additional revenues during this downturn in the economy. Bundox, Inc. relies

heavily on the tourist trade and convention business to generate revenues, both of which have suffered significantly in the post 9/11 marketplace.

We expect that with the restructuring of the current loan terms along with the ongoing technical assistance support of the Small Business Development Center, that the Bundox, Inc. will be able to restart making their loan payments.

Attached are the following documents for Bundox, Inc.

- A copy of 2001 Tax Return (fiscal year runs from March to February)
- A copy of an interim P&L/Balance Sheet (from March 2002 to December 2002 – 10 Mos.)

MAYOR'S OFFICE OF COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO

WILLIE LEWIS BROWN, JR.
MAYOR

ROGER SANDERS
DIRECTOR

DATE: March 25, 2003

TO: Leanne Nhan, Budget Analyst

FROM: Al Lerma, Program Director

RE: Bundox, Inc. dba The Waterfront Restaurant

1. Please describe how the loan is secured?

The loan is secured by a leasehold deed of trust on the property. We also have a UCC-1 (Uniform Commercial Code-1 Financing Statement) filed on the business assets (furniture, fixtures & equipment) with the Secretary of State's office. In addition, we have personal guarantees from Al & Cheryl Falchi.

2. Explain in detail what will occur if the borrower defaults.

If the borrower defaults and the business is unable to continue, MOCD would work with the Port to put the lease on the market in order to solicit a new tenant to buy out our interest. In the meanwhile, MOCD would have to pay rent to the Port in order to keep the lease in good standing. With the economy in a recession MOCD would likely only recoup a fraction of the outstanding loan balance by selling the leasehold interest. In addition, a going out of business sale for the furniture, fixtures & equipment would likewise only generate a fraction of the original value of the equipment since so many restaurants have closed in the past year and there is a lot of restaurant equipment available at bargain prices.

At the moment we could stand to lose not only approximately 85-90 local jobs but also the adverse consequences of having a defaulted loan on our books. Since MOCD borrowed these funds from HUD through the Section 108 Loan Program, we must continue to make loan payments to HUD for the outstanding loan balance. In addition, the opportunity costs of a defaulted loan of this size would result in MOCD funding less community programs with funds that would instead have to be used to pay back the remaining loan balance to HUD. As you can see this would have a serious impact on funding for our community development programs.

The source of funds for these costs in the event of a loan default would be primarily from two areas. The first source would be the program income generated from other active loans in our

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portfolio. The second source would be the annual CDBG grant that CCSF receives from HUD each year.

Program income from our revolving loan funds goes toward making new loans to small businesses in San Francisco. Funds from our annual CDBG Grant are used to fund a broad spectrum of services for low-to-moderate income San Franciscans. As mentioned previously, funds used to repay a defaulted loan would have an adverse impact on the program services currently funded by this office.

These are the primary reasons why it makes more sense to assist the Waterfront in the near term to stay in business and continue to service their lease and their loan payments with this office. As the economy improves in the future, it would further strengthen our collateral position and result in a positive future for the business.

3. **List all changes being made to the original Loan Agreement. Is there a cost to these changes?**

The changes in this loan amendment include a reduction in the interest rate from 9% to 6% and an extension of the current loan term from Feb. 2012 to Feb. 2025. The term extension was intended to correspond with the Port lease extension. There may be some additional minor adjustments as we finalize a workable amortization schedule. However, these will be done within the above stated terms.

There are no additional costs to MOCD for making the proposed changes to the loan agreement. Under these revised terms MOCD would expect to recover both the loan principal balance plus interest over the life of the loan.

4. **Why did the MOCD Section 108 Loan to Bundox not require Board of Supervisors approval?**

MOCD did receive Board of Supervisors approval in Resolution 67-96 (File No. 68-95-5.1) to accept and expend Section 108 Revolving Loan Guarantee Funds for this program in accordance with the federal rules and regulations of the program. In doing so the Mayor's office accepted the administrative responsibility for the Section 108 Revolving Loan Guarantee funds in accordance with federal rules and regulations. The administration of the Section 108 Loan Program by the Mayor's Office includes loan application review, loan underwriting, loan amendments or workouts, loan servicing, loan collections and all other aspects of revolving loan fund administration.

5. How much has been paid by Bundox, Restaurant, Inc. to date?

- I am revising the expenditures breakdown from my previous memo, loan funds were used for the following:

Leasehold improvements	$ 2,489,600.73
Furniture, Fixtures & Equipment	$ 451,126.91
Interest Reserve	$ 146,250.00
Working Capital	$ 163,022.36
	$ 3,250,000.00

- To see how much Bundox, Inc. had paid to-date and to see the fiscal impact to MOCD & City see table below:

MOCD: BUNDOX, INC. LOAN TERM COMPARISON

	Original Loan Terms	Proposed Revised Loan Terms
		(See **Note below)
Loan Amount	$3,250,000.00	$3,283,597.77
Interest Rate	9 percent	6 percent
Monthly Payment	$31,161.00	$22,429.42
Term	Yrs. 1996 - 2012	Yrs. 2003 - 2025
Interest Paid To-date	$1,248,787.46	$1,248,787.46
Principal Paid To-date	$317,579.49	$317,579.49
Sub-total Paid To-date	$1,566,366.95	$1,566,366.95
Projected P&I over the life of the loan	$6,356,869.88 (Already includes P&I Paid To-date)	$5,921,366.19 (Plus P & I Paid To-date) $1,566,366.95
Total P & I over loan term	$6,356,869.88	$7,487,733.14

**Note: The revised loan amount of $ 3,283,597.77 above includes the following:

Current Loan Principle Balance	$2,932,420.49
Past Due Interest	$351.177.28
Revised Loan Principle Balance	$3,283,597.77

A copy of the proposed loan amendment is attached under separate cover.

Cc: Roger Sanders, Director

John C. Clifford, MAI

CLIFFORD ASSOCIATES
REAL ESTATE APPRAISAL • ADVISORY • ARBITRATION

May 5, 2003

Ms. Carol Anderson
Assistant Deputy Director
Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111

RE: **Waterfront Restaurant**
Pier 7 ½, The Embarcadero
San Francisco, CA

As you requested I am reporting my preliminary findings regarding current market rental trends for large competing restaurant properties in San Francisco. It is understood this information will be used to evaluate the terms of a proposed lease modification for the Waterfront Restaurant.

WEAK MARKET CONDITIONS

The operating market for restaurant properties in San Francisco is extremely competitive and can only be characterized as in a "survivor" mode. This is due to the entrenched economic slowdown in the local and regional economy, now worsened by the onset of war and the outbreak of SARS. Restaurateurs report the current outlook makes the aftermath of the 1989 Loma Prieta earthquake look good. Consequently, a period of extreme inactivity is noted for new restaurants with the market dominated by restaurant failures and closings. These would include the Cypress Club, The Black Cat, and several others, including the discontinuation of the use of the second floor of the subject restaurant.

Prevailing market conditions impact all restaurants in San Francisco, but none more severely than the large facilities such as the subject. Many large restaurants like the subject depend on tourism and convention activity, which continues to be at historic lows, and with no end in sight. The subject represents one of the larger restaurant facilities in San Francisco. In addition, the subject location on the Embarcadero is appealing, but it is somewhat disconnected from CBD business patronage, the second tier of revenue source for the subject. Thus, the project relies primarily on tourism for its market share. Few new large restaurants have opened during the past 24 months, with most opening prior to, or at the onset of the unprecedented 1998-2000 economic cycle. In some cases these facilities were supported by the opening of the new baseball stadium, which at one point the City implemented a moratorium on new restaurants in its vicinity to avoid market saturation. In any event the indicated rental rates for these facilities are deemed irrelevant since they pre-date the current economic cycle and weakened market conditions.

FUNCTIONAL OBSOLESCENCE

At nearly 10,000 SF on two levels, the appraiser concludes that the marketability of the subject restaurant is virtually non-existent, or extremely limited. There are simply very few restaurant operators interested in assuming the risk associated with operating such a large facility. The only method to

attract a tenant to the subject location, or any location that features a project of this size is to offer a fail-safe rental obligation, at least for a period to achieve market penetration and to insure stable operations.

Among the large facilities which have been available, the appraiser notes the following.

Recent activity at the newly rehabilitated Ferry Building also confirms this trend. The initial marketing plan for the prime public and restaurant facilities envisioned use of up to 7,500 SF. However, only three small restaurant leases have been executed with net rental rates ranging from $2/SF/MO to $3/SF/MO. These deals require extensive owner paid tenant improvement (TI) allowances from $50/SF - $100/SF, and offer discounted rent for years 1 and 2 in a 10 year term. This location also distinguishes itself from the subject location as it benefits from voluminous commuter traffic using Ferry service to the North and East Bay.

The appraiser is aware of a reported proposal to open a relatively large restaurant in the Jackson Square district. This is a popular location more proximate to serve business clientele, but includes lower level and main floor premises. It benefits from a good location adjacent to a relatively successful large restaurant, Kokaari. However, the premises at 244 Jackson have been available for more than two years. The specific terms of the transaction could not be disclosed at this stage of negotiations, but it was noted that extensive tenant improvement allowances would be required. The broker handling this property, who is considered a specialist in restaurant properties in San Francisco, confirmed the subject size and location would have limited appeal under current and projected market conditions, unless attractive economic terms are offered.

The required rental attraction is demonstrated by another pending transaction at Pier 33 where Lapis once operated. It was reported that the lease has been assigned to the operator of Butterfly, who will relocated from the Inner Mission district. Butterfly has agreed to assume a 9.5 year lease term beginning this month. The premises contain 6,772 SF and requires a rental payment of $7,000/mo, or $1.03/SF/MO. The base rent is measured against a 7% percentage rent during years 3 – 9.5, with a reduced percentage rent of 5% in year 1 and 6% in year 2. The premises are to be conveyed in their as-is condition.

At Rincon Park, a well known restaurateur, Reed Heron, has elected to sublease a location which can support a 16,556 SF facility. The offering is to provide shell completion at $3/SF/MO. The broker indicates there has been no interest, despite its location opposite an F-line stop on the Embarcadero near the stadium.

One of the larger and more recent transactions is the Slanted Door restaurant at 100 Brannan Street near a successful new condominium project and the stadium. It contains 5,200 SF and was leased in 2001 requiring a net rent of $1.92/SF/MO which remains flat and requires no percentage rent. Further, the owner was required to provide turnkey improvements.

Several of these lease transactions are summarized on Table 1. The recent activity suggests that base rent levels for small restaurants range up to $3/SF/MO with larger facilities renting between $1.03/SF/MO to $2.50/SF/MO. Typically the base rent is escalated each year by CPI. In most cases base rent is measured against a percentage rent of 6% to 7%. In some cases, rent paid by long term operators is structured on a percentage rent only requirement. These reflects rates from 6.5% to 8.5% for food and beverage, respectively. Again, it is noted that even some of these percentage benchmarks have declined or disappeared such as at the Ferry Building and the Slanted Door.

Other than a pending large restaurant transaction in Jackson Square, and the Pier 33 lease, the appraiser is not aware of any facilities that have been recently leased that are similar in size to the subject. The subject includes a total enclosed square footage is 9,189 SF. This is divided into the café utilizing the first floor and mezzanine only which contains 6,219 SF. The second floor contains 2,970 SF and until January 2001 was operated as a full service formal dining restaurant. Due to declining patronage, the second floor restaurant was closed in January 2001. The failure of this upper floor facility is also attributed to the requirement to operate separate kitchens and wait staffs on each level of the Waterfront, rather than to realize some economies sometimes achieved at other large facilities. The inability of the current and long-term operator of the subject to continue full operations are a testament to severe market conditions, and the super-adequacy of the Waterfront facility. In a sense, the design of the two story facility is advantageous to facilitate separate closure of the upper floor area.

It is understood the proposed Waterfront lease modification requires a base rent of $10,000/mo. This requirement reflects a rate of $1.09/SF/mo, based on the total enclosed area of 9,189 SF. This requirement reflects a rate of $1.61/SF/mo, based on the effective area of operation totaling 6,219 SF. It is also noted the modification provides no tenant improvement allowance, and represents a true savings and income benefit to the owner. For every $10/SF of TI allowance that an owner can avoid, an effective rent reduction of $.11/SF/MO can be offered for a 10 year lease. This is noteworthy in comparison to other lease transactions where the trend requires significant owner TI contributions.

In the final analysis, the appraiser concludes the subject has limited marketability and exhibits functional obsolescence due to its size and design. This is also indicated by analyzing restaurant gross sales volume.

DECLINING SALES VOLUME

The best evidence of limited market demand can be illustrated by examining declining restaurant sales volume at the subject and other nearby facilities, both large and small. These are summarized on Table 2.

The downturn in the subject's recent sales volume activity is revealing, and suggests the facility represents an over-improvement in terms of size. During the height of the economic cycle, the subject achieved high sales volume levels of nearly $7 million in 1998 and 1999, and before new restaurant operators rushed in to tap excess profits. Subsequently ruinous competition emerged which has combined with an economic slump to erode profitability and sustainability for many operators. The subject's declining sales volume to $3.7 in fiscal 2001-02 indicates an overall rate of $407/SF based on the entire square footage of 9,189 SF, and $601/SF based on the first floor and mezzanine only which contains 6,219 SF. The latter figure is reported following the operators decision to discontinue operations on the second floor containing 2,970 SF in January 2001. During the 9-month 2002-03 fiscal period, declining sales volume has continued, and recently reflects a sales volume of $447/SF based on the effective useable area of 6,219 SF. This rate, based on the smaller premises (6,219 SF) is bracketed by the sales performance achieved at other nearby popular restaurant properties, i.e. Fog City Diner reporting a recent sales volume of $440-$460/SF/YR, and Pier 23 at $500/SF/YR. These facilities more closely compare in terms of size to the subject's consolidated operations.

WATERFRONT LEASE

It is understood the parties are considering a lease modification under current market conditions The history of the current lease terms is convoluted, due to the long term historic occupancy at this location, the operator's extensive and excellent quality reconstruction, including the addition of public access to the waterfront, and the structure of base and percentage rent which provides a rent credit to the operator to partly offset construction costs. Further consideration is given to the remaining term of the

current lease, and its impact on the marketability of the leasehold estate, as well as the reversion value of the premises to the landlord. This is an important factor in evaluating the proposed lease modification. Consequently, it is difficult to evaluate any single factor, such as the base rental rate, at any one particular point in time. Rather the entire context of the lease terms must be considered.

Under the existing lease terms which extend until 2016, a current base rent of $21,785/mo is required, which is compared to a 7% percentage. However, rent credits are provided which matured in 2008. The base rent was to increase by CPI in 3 year intervals. The appraiser analyzed the contract lease terms in 2001 and concluded the contract rent was above market and resulted in a negative leasehold interest in the project. This is certainly true at this point, where at face value, the current base rent of $21,785/mo is $2.37/SF/MO based on the total enclosed area, and $3.50/SF/MO based on the area now in operation. Overall, this rate appears high by comparison to other large and small restaurants. In terms of sales volume, using a 7% percentage rent, the current rent requires a breakeven volume of $406/SF/YR based on the total enclosed area, and $600/SF/YR based on the area now in operation. The conundrum is that the functional appeal for the total enclosed area is obsolete, as it is too large and inefficient to operate on two levels to achieve a sales volume at a level that is consistent with smaller restaurants. Conversely, the competitive demand is too weak to achieve a $600/SF/YR sales volume based on the consolidated area now in operation.

A proposed modification to require a base rent of $10,000/mo is under consideration. In addition, the lease is extended until 2025, and the CPI increase is implemented annually after 2007. The percentage rent is reduced to 6%, but this rent is deferred until 2007 and only payable to the city if the current operator sells his leasehold interest and there are proceeds available after retiring existing mortgage debt. The base rent requirement reflects a rate of $1.09/SF/mo, based on the total enclosed area, and $1.61/SF/mo, based on the effective area of operation totaling 6,219 SF. One advantageous element to this transaction is that the landlord is able to avoid TI expenditures, which has become a costly and prevailing lease consideration, under current market conditions. Its omission represents a true savings and income benefit to the owner as noted above. The recent lease to Butterfly at Pier 33 suggests the nominal base rent terms of the subject lease modification are consistent with economic terms that were sufficient to attract a knowledgeable and experienced restaurateur willing to enter a risky and competitive operating environment.

However, the modification to defer additional rent under the percentage clause until 2007 and require payment only if the business is sold is an advantage to the tenant, particularly if the business environment rebounds and there is support to re-open the upper floor restaurant premises. Reduction in rent during the early period of a lease terms is not uncommon and has also been negotiated elsewhere. However, the deferral of percentage rent for a period of 4 years is atypical, unless one considers that it may take up to 2 years or more to find a replacement tenant like at 244 Jackson noted above, and then offer reduced rent to a new tenant during the early term. Nonetheless, the base rent of $10,000/mo reflects only 3.2% of the reported gross sales volume of $3.7 million as of fiscal year 2001-02. Using the 6% percentage rate under the terms of the modified lease, the total rent would approximate $18,700/mo. Thus, a deficit rent of $8,700/mo would accrue over the next approximate 48 months, totaling $417,000. This is advantageous to the tenant when most other operators are willing to pay 5% to 7% of gross sales volume. However, these operators have not spent extensive capital resources to improve their facilities like the subject operator. These same funds are the target of a rent credit and the structure of the modified lease may be an attempt to achieve parity with the recent over-improvement constructed by the current tenant, and which ultimately reverts to the Port in 2025 or before if there is a default on the lease.

CONCLUSION
There appears to be mutual benefits to both parties based on the proposed lease modification. The merits of the discounted rent to the tenant have been identified above. For the owner, operations continue during a time when locating a new tenant may take several years, and there is no assurance another operator could perform at any higher level to generate greater rent to the landlord, particularly if new tenant improvements are exacted from the landlord. Further, there is at least some potential the Port could realize payment of deferred percentage rent if the project is sold. This potential is increased by the extension of the lease until 2025. The modification appears to reflect a reasonable attempt by both parties to help each survive the current economic downturn until more robust economic returns can be achieved.

Please feel free to contact me if you have any questions regarding these comments.

Respectfully submitted,

CLIFFORD ASSOCIATES

John C. Clifford, MAI

IMPROVED RESTAURANT LEASES **TABLE 1**

PROJECT NAME	PARCEL SF	BLDG SIZE SF	Start Date	Term	Base Rent $/sf/mo	% Rent Food	% Rent Bevg	Owner TI's
Gordon Biersch		13,934	10/19/91	10 Yrs +(5) 5 yr opt	$2.13	7.0%	7.0%	
Boulevard	6,302	9,748	9/29/93	10 Yrs +(3) 5 yr opt	$1.92	7%	7%	
Boulevard			2003	Renewal	$2.50	5 % - 6%		
One Market			1992	10 Yrs		6.5%		
Sinbad's			4/1/96			6.5%	8.5%	
Fisherman's Wharf Restaurants			2/21/96			6.5%	8.5%	
Rincon		16,556	Available		$3.00	7.0%	7.0%	$50 - $100
Pier 33		3,538	11/1/97	9 Yrs.	$2.80	7.0%	7.0%	
Kokaari	2 levels	8000	1/1/99	10 Yrs	$3.00			
Slanted Door		5200	2/1/01	10 yrs	$1.92			
Ferry Bulding		Various up to 3,000 SF	2002	10 yrs	$2.00 to $3.00	5 % - 6%		$50 - $100
1200 9th St.		6000	Aug-00	5 yrs	$3.75			$50
Beach Chalet		6,032	12/31/96	20 Yrs.	$0.86	6.0%	7.5%	

TABLE 2

RESTAURANT SALES VOLUME

PROJECT NAME	BLDG SIZE SF	95 Sales	96 Sales	97 Sales	98	99	00	01	'02 thru 3 qts
Waterfront	9189		$3,084,564	$2,814,357	$6,963,006 expansion	$6,846,015	$8,066,943	$3,740,714 closed 2nd flooor (1) from 9189 SF to 6219 SF	$2,781,949
	Sales $/SF/YR				$758	$745	$660	$407 $601 (1)	$447 (1)
Fog City Diner	7627				$3,895,358	$3,965,900	$3,935,539	$3,506,002	$2,523,109
	Sales $/SF/YR				$511	$520	$516	$460	$441
Pier 23	4835				$2,290,558	$2,441,733	$2,865,210	$2,739,657	$1,825,607
	Sales $/SF/YR				$474	$505	$593	$567	$503
Gordon Biersch	13,934	$5,384,803 $386	$5,642,445 $405	N/A					
Boulevard	9,748	$6,587,369	$7,362,477	$7,913,369 $812					

2.1 – THE NATIONAL RECESSION

The American economy slid into recession in 2001 after a record-long expansion. The prosperity of the 1990s was ignited in 1993 by the Clinton tax reform that eliminated the structural federal deficit that had plagued the US economy since it was created by the Reagan tax cuts in the early 1980s. Once underway, the expansion was fueled by sustained productivity growth arising from convergence of investments in technology, corporate restructuring to compete successfully in the global economy, efficiencies from widespread use of the Internet, and the rising skills level of American workers.

The year 2001 began badly with the newly elected president dampening business confidence with talk of recession to garner support for the tax cut he signed into law on June 7. Short-term interest rates fell in response to the prospect of more short-term liquidity from tax rebates. However, when other likely effects of the tax cut, such as re-introduction of the structural deficit and reduction in the progressivity of the federal tax structure were considered, the market did not reduce long term rates. It was clear to most analysts the federal government would be forced to borrow heavily to cover the deficits created by the tax cut, even before the massive inflation of the defense budget following the September 11 terrorist attacks.

Business capital spending, especially purchases of high-tech equipment and software, plunged in the second quarter. Substantial investments in this technology to address potential Y2K problems appears to have borrowed from future orders, and collapse and retrenchment in the dot.com industry further reduced demand.

The falling demand initially hit high-tech equipment manufacturers and software producers. However, malaise quickly spread to share prices of other high-tech companies. The speculative bubble that had grown to alarming proportions on the NASDAQ burst, sending share prices plunging on all of America's stock exchanges.

As the US economy slowed, major foreign markets for American products contracted, severely impacting the export-driven Bay Area economy.

The September 11 terrorist attacks on New York's World Trade Center and the Pentagon, and the Administration's response to these attacks, severely disrupted US air travel further exacerbating the recession. The effects of reduced air travel were particularly severe for California and the Bay Area because of the prominent role of visitor-dependent business in their economic base. Tourism has come back slowly and, at year-end 2001, still was well below year-ago levels.

For the nation as a whole, the recession has been more shallow, and perhaps less protracted than initially feared. Consumer spending has held up well despite rising unemployment, the NASDAQ losing nearly 70% of its value between February 2000 and

September 2001, and the plunge in bonus and stock option income in 2001 more than offsetting the increase in wage and salary income from all other sources.

Several explanations have been suggested for this seemingly anomalous consumer behavior. Although ownership of common stocks became more widespread in the bull market of the 1990s, the lion's share of stock market equity still is concentrated in the hands of institutions and wealthy individuals. Most Americans have the bulk of their wealth invested in residential property, rather than in stocks, and home prices held up well last year. Generous factory incentives in the fall pushed sales of motor vehicles to record levels and gave a major boost to consumer spending. Finally, spending rather than saving in times of economic insecurity that normally is seen as imprudent behavior has been touted as patriotism in the current circumstances.

The recession was cushioned by more than **$122 billion** of deficit-financed stimulus from the federal government. The Treasury borrowed **$40 billion** to pay advances on anticipated taxpayer savings from the tax cut. Congress approved **$40 billion** not in the budget to bail out the airlines, assist New York City, and improve national security, and another **$42 billion** for the largest increase in military spending in two decades. It appears that budgeted spending in several other departments of the federal government has accelerated, possibly in anticipation of a ballooning federal deficit that may curtail such spending in the months ahead.

The current loose consensus among economists is for a national recovery beginning by mid-year 2002 to gather steam and put the economy on reasonably firm footing by the end of the year. The strength of the recovery hinges primarily on the strength of the rebound in capital spending in which decline precipitated the recession. The major risks to the consensus forecast are that the high-tech business recession will be deeper and more protracted than many forecasters expect, consumer confidence will flag as unemployment continues to rise as it is expected to do well into the summer, or that another September 11 type event may again destabilize the economy.

2.2 – IMPACT ON SAN FRANCISCO

Overall, the California economy performed better than the nation as a whole in 2001, with most of the pain felt in the Bay Area where the majority of the State's job losses were concentrated. The unemployment rate in Santa Clara County, host to most of the State's high-tech electronics firms, rose from **1.5%** to **6.6%**. The unemployment rate in San Francisco, center of the dot.com boom and an economy that relies heavily on the visitor industry, rose from **2.7%** to **6.1%**.

Municipal tax collections are good quantitative measures of local economic performance, because they reflect many different types of economic activity and the natural tension between taxpayer and tax collector helps to assure accurate data. The San Francisco Controller's mid-year status report on the city's General Fund resources summarized in ***Table 2.1*** paints a stark picture of the depth of the local recession. Data reported for fiscal

years ending June 1 in 2001 and 2002 show absolute declines in tax revenues, not just a leveling of growth.

Total *General Fund Resources* are forecast to be off more than $60 million or nearly 3% in the current fiscal year. Most of the damage is from a $64 million, 5.4% drop in tax revenue, and a nearly $29 million, 19% drop in combined transfers from Hetch Hetchy and San Francisco International Airport. What would otherwise be a $93 million shortfall in total *General Fund Resources* is cushioned by a $26 million increase in *Intergovernmental Revenues*, mainly subventions from the State of California, and a nearly $7 million net increase in *Other Internal Revenues*. The main components of *Other Internal Revenues* are an $18 million increase in user charges for *Medicare, Medical* and other *Health Services*, offset in part by a $10 million drop in *Interest and Investment Income*.

Table 2.1
Change in San Francisco General Fund Resources
FY 2001 to FY 2002

($000,000)			Change	
	FY 2001	FY 2002	Amount	Percent
PROPERTY TAXES	461.9	474.0	12.0	2.6%
BUSINESS TAXES	277.1	271.7	-5.4	-2.0%
Business Registration Tax	10.0	6.4	-3.6	-35.7%
Payroll Tax	267.1	265.2	-1.9	-.07%
OTHER LOCAL TAXES	451.4	380.3	-71.1	-15.8%
Sales Tax	143.8	129.9	-13.9	-9.6%
Hotel Room Tax	131.4	94.8	-36.6	-27.8%
Utility Users Tax	77.2	76.9	-0.3	-0.4%
Parking Tax	33.8	33.0	-0.8	-2.4%
Real Property Transfer Tax	62.3	43.0	-19.3	-31.0%
Admission Tax	2.9	2.6	-0.3	-8.9%
TOTAL TAXES	1,190.4	1,126.0	-64.4	-5.4%
OTHER INTERNAL REVENUES	185.5	192.4	6.9	3.7%
INTERGOVERNMENTAL REVENUES	636.4	662.1	25.7	4.0%
TOTAL REVENUES	2,012.3	1,980.5	-31.8	-1.6%
TRANSFERS INTO GENERAL FUND	149.1	120.3	-28.8	-19.3%
Airport	26.2	21.7	-4.5	-17.0%
Hetch Hetchy	29.9	0.0	-29.9	-100.0%
Other Transfers	93.1	98.6	5.5	6.0%
TOTAL GENERAL FUND RESOURCES	2,161.4	2,100.8	-60.6	-2.8%

SOURCE: *FY 2001-02 Six-Month Budget Status Report*. Controller, City & County of San Francisco. February 8, 2002.

More instructive for our purposes is what has happened to collections of specific taxes. The $37 million, 28% plunge in *Hotel Room Tax* revenue is eloquent testimony to the current depressed state of the visitor industry. The $14 million, 10% drop in *Sales Tax*

revenue also reflects the precipitous drop in the number of visitors to San Francisco. *Parking Tax* revenues are off 2.4% due to lower usage, and revenue from city-owned garages located mainly in the downtown area are off 10.5% due to lower usage and lost revenue due to current reconstruction work at the Union Square Garage.

The 36% drop in *Business Registration Tax* revenue and 31% drop in *Real Property Transfer Tax* revenue, reflect the generally depressed nature of business in the city.

The $37 million, 28% drop in projected FY 2002 *Hotel Room Tax* revenue from the FY 2001 level, is nearly $47 million lower that the amount the city had budgeted for this source of revenue. The shortfall is the result of sharply lower hotel occupancy and significantly lower average room rates as shown in *Table 2.2*. Occupancy has been down as much as 33% in recent months and average room rates off as much as 16%. Effects of the September 11 terrorist attacks clearly are evident in data for September and months in the final quarter of the year. A disaster in New York City quickly became a disaster for San Francisco's hospitality industry. Room rates were already softening from the recession, but after 9-11 hotels discounted more aggressively in an attempt fill the plethora of vacant rooms.

Table 2.2
San Francisco Hotel Room Rates & Occupancy Rates
Annual 1995 – 2001 & Monthly 2001

Month 2001	Av. Daily Room Rate	Overage Occupancy	Year	Av. Daily Room Rate	Overage Occupancy
January	$173	65%	2001	$168	68%
February	$182	71%	2000	$174	82%
March	$180	73%	1999	$155	80%
April	$172	69%	1998	$146	81%
May	$196	76%	1997	$134	81%
June	$175	80%	1996	$122	80%
July	$164	76%	1995	$107	74%
August	$156	81%			
September	$151	58%			
October	$165	61%			
November	$148	56%			
December	$132	52%			

SOURCE: San Francisco Convention and Visitors Bureau

The *Hotel Room Tax* has been one of the city's most reliable and fastest growing revenue sources, increasing 9.4% a year on average over the last 20 years from $33 million in FY 1981 to $195 million in FY 2001. The tax increased 13.6% a year on average during five-year dot.com boom preceding FY 2001. The plunge in *Hotel Tax* revenues is a serious matter, especially for numerous nonprofit arts groups that rely on grant funding from the *Hotel Tax Fund*, and the *Convention and Visitors Bureau* that relies on the tax for half its marketing budget.

2.3 – IMPACT ON RESTAURANTS

The impact of the deep recession that has descended on San Francisco in 2001 is reflected in restaurant employment, restaurant income, and the number of restaurants. Information on these measures for this report was drawn from the California Employment Development Department (EDD), a private recruitment service, the San Francisco City Government tax collection and licensing agencies, and a survey of San Francisco table service restaurants.

2.3.1 – Restaurant Employment

The California Employment Development Department (EDD) data show a half percent decline in *eating and drinking place* employment in *the San Francisco Metropolitan Statistical Area* (MSA) [1] from 72,900 in 2000 to 72,500 in 2001. *EDD* has yet to release 2001 data for San Francisco County, but projecting the MSA results to the county suggests restaurant industry employment dropped from 42,700 in 2000 to about 42, 485 in 2001. Comparable data in this EDD series increased on average 4.6% a year in each of the preceding five years.

The adverse effects of the recession and September 11 terrorist attacks on San Francisco and Bay Area restaurants were reflected in a sharp drop in recruitment advertising for restaurant jobs, and a sharp rise in the number of applicants seeking such jobs. Data on these difficult to quantify trends for the second half of 2001 were contributed to the current report by John and Karen Foley, two veteran Bay Area restaurant owners who operate online recruitment and applicant web sites in ten major hospitality markets in the United States. Their sites, ***needwaitstaff.com*** and ***needkitchenstaff.com***, at year-end 2001 were assisting 145 Bay Area employers and 2,244 local applicants.

Employers post their job openings on the two web sites and remove a posting when the job is filled. Job applicants post their full resume at one of the two sites and answer specific job related questions prior to gaining access to review employer job postings. Typically applicants request their resumes be removed from the site when they find employment. The Bay Area sites' applicant pool is split about 14% for kitchen staff and 86% for wait staff.

Restaurant advertising and recruitment for applicants from June 2001 through September 11, 2001 were relatively constant in the Bay Area, though less robust than in 2000. However, post-September 11, with air passenger traffic and hotel occupancy falling like a rock, and restaurant patronage off sharply, recruitment advertising at the two web sites decreased by more than 75%.

As recruitment imploded, the number of applicants seeking work exploded, rising nearly 50% in six month. An accompanying change was that far fewer successful applicants requested their resumes be removed from the web sites. Instead, more and more applicants adjusted their resume page to reflect the number of hours they still had

[1] The San Francisco Metropolitan Statistical Area includes San Francisco, San Mateo and Marin Counties

available for additional part-time and on-call jobs. *Table 2.3* exhibits the monthly pattern of applicants during the last six months of 2001.

Table 2.3
Percent Decrease in Applicants for Bay Area Restaurant Jobs
needwaitstaff.com & needkitchenstaff.com Web Sites
June to December, 2001

	June	July	Aug	Sept	Oct	Nov	Dec
needwaitstaff.com	1,396	1,516	1,572	1,708	1,920	1,998	2,018
needkitchenstaff.com	104	106	114	125	174	183	226
Total	**1,500**	**1,622**	**1,686**	**1,833**	**2,094**	**2,181**	**2,244**
Monthly Increase		8.1%	3.9%	8.7%	14.2%	4.2%	2.9%
6-Month Increase	**744 applicants 50 percent**						

SOURCE: John Foley, CEO, neednetstuff.inc

Among the ten US hospitality markets served by the Foley web sites, San Francisco Bay Area applicant growth in the second half of 2001 was surpassed only by the New York/New Jersey market. Although the ***needwaitstaff.com*** and ***needkitchenstaff.com*** web sites do not encompass the entire local restaurant employment market, their experience is a good indicator of recent conditions in that market.

In current market conditions, many more workers are looking for restaurant industry jobs now than a year ago, and many more workers are looking for jobs than there are jobs looking for them. This section of this report discusses three deleterious effects of the current recession on the San Francisco restaurant industry. The first of these is that the recession has created significant employment problems for industry employees.

2.3.2 – Restaurant Income

People who run restaurants have an exceptionally strong grasp of where money comes from. You buy food, you sell food, and hopefully you make enough money on the difference to pay for all of your other business expenses (payroll, rent, local taxes, insurance, napkins, etc.). If there's anything left at the end of the day, that's income – that's where money comes from.

The second deleterious effect of the recession is that restaurant income on average plunged more than 40% in 2001. *Table 2.4* summarizes the *median Income & Expense Statement* values for table service restaurants in the restaurant survey conducted for this report.

Table 2.4
Median Change in Income & Operating Expenses
Total & Per Seat
2000 to 2001

	Percent Change	Percent Change Per Seat
Sales	- 4.2 %	- 4.5 %
Cost of Sales	- 6.2 %	- 6.8 %
GROSS MARGIN ON SALES	-3.0 %	- 3.2 %
Operating Expenses	- 0.2 %	- 0.4 %
INCOME before INCOME TAXES	- 40.5 %	- 32.4 %

Source: *San Francisco Restaurant Survey 2002*, Golden Gate Restaurant Association

Among survey participants, a 4% drop in *Sales*, and 6% drop in the *Cost of Sales*. produced a 3% drop in *Gross Margin on Sales*. *Operating Expenses* were flat, dipping just *0.2%*. and so these expenses took such a big bite out of *Gross Margin*, they drove *Income before Income Taxes* down 40%.

2.3.3 – Number of Restaurants

The third deleterious effect of the recession on the San Francisco restaurant industry is that is has put an unprecedented number of restaurants out of business. Data in *Table 2.5*, provided by San Francisco's *Department of Public Health* from the *Tax Collector's* restaurant license database, show the city lost nearly 7% of its restaurants in the six months from June 1 to December 1, 2001.

Table 2.5
San Francisco Restaurants & Bars
Number of Establishments
June 1, 2001 & December 1, 2001

Type License	Type of Establishment	June 1, 2001	Dec. 1, 2001	Absolute Change	Percent Change
H24	Restaurants < 1,000 sq ft	1,313	1,227	- 86	- 6.5 %
H25	Restaurants 1,000 to 2,000 sq ft	1,202	1,142	- 60	- 5.0 %
H26	Restaurants > 2,000 sq ft	1,043	968	- 75	- 7.2 %
	Table Service Restaurants	3,558	3,337	- 221	- 6.2 %
H28	Take-out Restaurants	630	565	- 65	- 10.3 %
H29	Fast Food Restaurants	46	44	- 2	-4.3 %
	All Restaurants	4,234	3,946	- 228	- 6.8 %
H27	Bars, Tavern & Lounges	397	387	- 10	- 2.5 %

SOURCE: San Francisco Department of Public Health, Environmental Health Section

An official who deals with these data at the *Health Department* observed the number of active restaurant licenses is a very stable statistic in San Francisco and a drop of the magnitude shown in ***Table 2.5*** has not occurred before. Often, when one restaurant goes out of business it quickly is replaced by another restaurant, but these numbers document a very large *net* reduction in the *total* number of restaurants.

The *Tax Collector* retains all records of current and past restaurant licenses in a database that distinguishes between active and inactive tax accounts. Maintaining this database involves activating new accounts and deactivating accounts when annual licenses are surrendered or allowed to lapse. ***Table 2.6*** summarizes the number of accounts opened and closed each year from 1998 forward, based on opening and closing dates shown in the license database. Often there is a lag between a restaurant closing and the deactivation of its license, and several records in the database have empty date fields suggesting gaps in the maintenance of these data. Nevertheless, ***Table 2.6***. reinforces the message from ***Table 2.5***, namely a large net number of restaurants closed in 2001, in this telling, 154, rather than the probably more accurate 228 in ***Table 2.5***.

The 2002 data in ***Table 2.6*** cover only the first 14 days of January because the *Tax Collector* ran the database provided for this report on January 14. However, even in that brief period seven more restaurants bit the dust.

Table 2.6
San Francisco Restaurant Tax Accounts
Number Opened, Closed & Net Change
1997 - 2002

Year	Accounts Opened	Accounts Closed	Net Change
2002 [1]	1	7	- 6
2001	439	593	- 154
2000	677	713	- 36
1999	625	570	55
1998	681	724	- 43
1997	581	397	184

SOURCE: San Francisco Tax Collector
1. Data for 2002 are as of January 14, 2002

MEMORANDUM

TO: Harvey Rose, Budget Analyst

FROM: Kenneth E. Winters, Director of Real Estate, Port of San Francisco

RE: Waterfront Restaurant Lease Amendment Proposal

DATE: May 13, 2003

Pursuant to our discussion, this memorandum is provided as a reconciliation and summary of the Clifford Associates report of May 5, 2003.

The overall rent which a landlord expects to receive is based on a percent of a restaurant's gross sales. In the case of the proposed Bundox/Waterfront Restaurant lease, the overall rent which the Port expects to receive is based on 6% of Waterfront's gross sales annually. The conclusion for the Bundox lease restructure must be compared to other restaurants' gross sales and the resulting overall rent/s.f. in the market comparables presented earlier through the Clifford Associates report. In addition, we take into account that the proposed minimum rental rate is in effect a discounted rate, due to the significant and unusual level of capital improvements which Bundox funded on its own behalf as well as that of the Port. Further, the size of Bundox/Waterfront at approximately 10,000 s.f. is obsolete under current economic and market conditions which is suggestive of a rent discount.

Though Waterfront Restaurant's proposed minimum rental rate is approximately $1.09/s.f., based on restaurant premises of 9,189 s.f., or a total of $120,000 per year, when viewed as a function of 6% of all gross sales, the actual rent per square foot paid to the Port is projected to be in fact much more, depending on the level of sales, as follows.

<u>Waterfront Restaurant</u>

Projected Gross Sales	$ 4,000,000	$ 5,000,000	$ 6,000,000
% Rent, 6%, Due to the Port	$ 240,000	$ 300,000	$ 360,000
Rent/Month	$ 20,000	$ 25,000	$ 30,000
Est. Rent/s.f./Month	$ 2.17	$ 2.72	$ 3.26

Market Comparable Summary

Utilizing the comparables from Table 2 provided by Clifford Associates, further breakdown in a similar fashion reveals the following Gross Sales and resulting Rent per Square Foot per Month comparisons for recent years.

	1999	2000	2001	2002
Fog City Diner	$ 3,965,900	$ 3,935,539	$ 3,506,002	$ 3,453,935
% Rent, 6.75%	$ 2.92/s.f.	$ 2.90/s.f.	$ 2.58/s.f.	$ 2.54/s.f.
Pier 23 Café	$ 2,441,733	$ 2,865,210	$ 2,739,657	$ 2,818,999
% Rent, 7%	$ 2.94/s.f.	$ 3.45/s.f.	$ 3.30/s.f.	$ 3.40/s.f.

Also noted in Clifford's report is Boulevard Restaurant which totals 9,748 s.f., and reportedly averages annual gross sales of $8 million. Until recently their percentage rent was 7% which resulted in an overall rent of $4.78/s.f./month. Clifford reports that Boulevard recently renewed its lease reducing the percentage rent from 7% to between 5%-6%. Assuming the percentage rent to now be 5.5%, the resulting overall rent based on $8 million in gross sales would be $ 3.76/s.f./mo.

Market Deal Adjustment of Minimum Rent

The Waterfront Restaurant invested over $3.2 million to improve the Waterfront Restaurant and the public access areas for the Port. The Port agreed to contribute 50% of restaurant improvements up to $1 million, and 50% of public access improvements up to $700,000 through rent credits returned to Waterfront after achieving certain performance levels. The Bundox/Waterfront Restaurant lease structure is atypical due to the excessive burden placed on it with regard to all capital improvements (BCDC/public access improvements and tenant improvements) in addition to requiring a full market rent.

In a typical real estate lease transaction, a tenant would never be required to participate in public/capital improvements. As such, the landlord should have assumed responsibility for 100% of the public access space improvements. A landlord would have also contributed up to 50% of tenant improvements. Therefore, the Waterfront deal based on a typical lease structure would have provided for a Port contribution of $2.4 million, or approx. $261/s.f., (based on 9,189 s.f.) with Waterfront providing $800,000, or approx. $87/s.f. Utilizing Clifford's calculation described in his memo (for every $10/s.f. a landlord avoids in tenant improvement allowance, an effective rent rate reduction of $.11/s.f./mo is offered for a 10 year lease) the equivalent rent reduction would be as follows: $261/s.f. divided by $10/s.f. equals $26.10 divided by 12 months equals $2.17/s.f.. Because the lease is 20 years, the reduced rent number is divided by 2 and results in a theoretical rent reduction of $1.09/s.f. When added to the Waterfront minimum rent in the proposed lease of $1.09/s.f., the equivalent market rental rate equals $2.18/s.f., with landlord capital contribution.

Conclusion

Therefore, though the proposed Waterfront minimum rent of $1.09/s.f., appears to be at the low end of the minimum rent range of comparable leases, it is the Port's conclusion that the equivalent minimum rental rate is approximately $2.18/s.f., at the mid-to-high end of the comparable range, when taking into account the burden of both tenant and public access improvements by Bundox.

In addition, with regard to percentage rent, the typical range for restaurants is 5% to 7% of gross sales. Percentage rent is negotiated taking into consideration a restaurant's operating experience and projections, landlord improvements and minimum base rent. In addition, economic environment is a factor, as well as restaurant size. Bundox's proposed percentage rent of 6% is mid range and given the capital invested in both restaurant and public access improvements by the tenant, well within the market. As shown above, when rent is viewed as a percentage of gross sales, not merely the minimum rent component structured in the lease, the Waterfront lease proposal estimates that rent paid to the Port will be well within the comparable range--estimated at $2.17/s.f./mo (based on sales of $4 million) up to $3.26/s.f./month (based on sales of $6 million), depending on the sales volume reached. Should Waterfront's sales levels climb to $7 million (as was demonstrated in 2000, expected rent to the Port would be approximately $3.81/s.f./month. Market comparables noted range from $2.54/s.f./month to $3.45/s.f./month, and higher for extremely well performing restaurants such as Boulevard.

Perceived advantages to Bundox in the short term (until the Threshold Date or 2/1/07) again take into consideration the value provided by Bundox when the lease was originally done in 1996, in providing for the funding of significant capital improvements on behalf of the Port. In addition, the Port negotiated significant benefits to be realized at the back end of the deal. These benefits include consent rights on sale, a priority repayment of deferred rent after repayment of the loan to MOCD, and participation in 50% of all net remaining sale proceeds, which is atypical of any lease transaction.

Item 7 – File 03-0781

Department: Municipal Transportation Agency (MTA)

Item: Hearing to consider release of reserved funds in the amount of $12,381,055 for Quality Assurance and Construction Management Services for Phase I of the Third Street Light Rail Transit Project, to be provided by Sverdrup Civil, Inc.

Amount: $12,381,055

Source of Funds: Proposition B Sales Tax Revenue administered by the San Francisco Transportation Authority and appropriated in the MTA Capital Budget.

Description: The Third Street Light Rail Transit Project consists of:

- A new 7.1-mile light rail line, to be constructed in two phases. Phase I of the Third Street Light Rail Transit Project consists of a 5.4 mile extension of the Muni Light Rail Vehicle (LRV) System beginning at the Caltrain Station at 4th and King Streets, and running south along 4th Street, Owens Street, Third Street, and Bayshore Boulevard to a terminal adjacent to the Caltrain Bayshore Station near Bayshore Boulevard east of Sunnydale Avenue. Phase II of the Third Street Light Rail Project is a 1.7 mile extension from King Street to Third Street which runs into tunnels connecting to a transit terminal in Chinatown.
- A new LRV maintenance, operations and storage facility, Muni Metro East Facility, to be located on Illinois Street between 25th Street and Cesar Chavez Street.

Ms. Luz Cofresi-Howe of the MTA advises that the current schedule for the commencement of LRV service on the Third Street Light Rail Transit Project is November of 2006.

On July 3, 2001 the Municipal Transportation Agency Board of Directors awarded a consulting contract (Contract No. CS-132) through a Request for Proposal process to Sverdrup Civil, Inc. to provide quality assurance and construction management services for

$3,618,945, and (b) the subject requested release of $12,381,055 in reserved funds. According to Ms. Cofresi-Howe, the MTA has not expended any of the requested $12,381,055 in reserved funds to date.

Comments:

1. Ms. Cofresi-Howe advises that the MTA anticipates completing Phase I of the Third Street Light Rail Transit Project by November of 2006 at a total cost of $584,000,000 to be funded by San Francisco Transportation Authority Proposition B Sales Tax revenues ($340,000,000), and Federal and State grants ($244,000,000). The total Phase I project cost of $584,000,000 includes the $16,000,000 for the Sverdrup Civil, Inc. contract. According to Ms. Cofresi-Howe, Phase II of the Third Street Light Rail Transit Project has a total estimated cost of $763,900,000 and is to be funded by San Francisco Transportation Authority Proposition B Sales Tax revenues ($126,000,000) and Federal and State grants ($637,900,000). Ms. Confresi-Howe advises that Phase II of the Third Street Light Rail Transit Project is scheduled to be completed in 2011, the anticipated year when the Third Street Light Rail Transit Project becomes operational.

2. Attachment II, provided by the MTA, provides information pertaining to community concerns about the Mission Bay Turn Around Loop, and includes a list of the letters and meetings related to this matter.

3. In addition to Sverdrup Civil, Inc. serving as the prime contractor, Contract CS-132 includes 10 subcontractors. Attachment III, provided by MTA, lists (a) the prime contractor, Sverdrup Civil, Inc., and each subcontractor, and (b) the total estimated amounts to be allocated to Sverdrup Civil, Inc. and to each subcontractor.

Recommendation: Approve the requested release of reserved funds.

Attachment I

Board of Supervisors File 03-0781 Sverdrup Civil Inc. CS-132	FY 2001-2002	FY 2002-2003	FY 2003-2004	FY 2004-2005	FY 2005-2006	FY 2006-2007	Total Proposed Expenditures
Startup funding and equipment purchase	65,524	72,101	2,800	1,200	1,200	-	**142,824**
Outreach funding, divided over 4 years	33,325	48,858	60,000	60,000	60,000	-	**262,182**
Technical Service and Miscellaneous Activities over 3 years	50,430	14,205	69,970	96,000	66,000	-	**296,606**
Labor, including 8% Profit	1,091,008	2,352,443	4,248,507	3,791,719	2,785,617	1,029,094	**15,298,388**
	1,240,287	**2,487,607**	**4,381,277**	**3,948,919**	**2,912,817**	**1,029,094**	**16,000,000**
					Provided by Muni		**5/14/03**

MUNI

THIRD STREET LIGHT RAIL

SAN FRANCISCO MUNICIPAL RAILWAY • CONSTRUCTION DIVISION
1145 Market Street, Fifth Floor, San Francisco, CA 94103-1545 Phone: (415) 554-0785 Fax: (415) 554-3217

MEMORANDUM

TO: Alan Gibson, Budget Analyst Office

THROUGH: Dennis Tsai, Muni Construction

FROM: Drew Howard, Muni Construction

DATE: May 13, 2003

SUBJECT: Mission Bay Loop; Community concerns/Muni response

The following is a description of the issues raised by specific community members residing in the Dogpatch and Potrero Hill neighborhoods along the Third Street Light Rail Project corridor. Also shown below are MTA's outreach efforts and actions in response to the community members' issues.

- **Functional Purpose of the Mission Bay Turn Around Loop (MBL):** to provide turn-back for N-Judah shortline service into Mission Bay. Shortline will alleviate overcrowding on J-church line as a result of 60% of the eventual overall ridership coming from Mission Bay.

- **MBL Location:** 18th, Illinois, and 19th Streets at Third Street in the Central Waterfront, across from Pier 70. The turnouts from 3rd Street at 18th and 19th Streets are being constructed under a current construction contract MR-1141.

- **Operation:** Accommodates maximum 3 two-car trains for layovers. Operates weekdays only. No planned evening or weekend service.

- **Loop Approved as Part of EIS/EIR:** FEIR certified by the Planning Department in 1998, FEIS certified by the Federal Transit Administration (FTA) in 1999, Project approved by the Public Transportation Commission (now the MTA) in 1999 and the Board of Supervisors accepted the CEQA findings in 2002.

- **Significant Public Outreach for EIS/EIR:** Over 120 public meetings, 12 with the Citizen's Advisory Group (CAG), during which the loop operations were discussed and no issue raised.

- **Loop issue raised** when Muni told CAG we were considering extending loop to 20th Street.

- **Muni asked to look at other options in the area:** not feasible due to grade, land use, platform clearance, and driveway access constraints.

➢ **Community Issues raised in August 2000**
  - **Traffic impacts due to future development**
    - Traffic volumes in 2015 in area of the loop are comfortably below capacity according to *San Francisco Southern Waterfront SEIR Transportation Study* (Aug 2000)
  - **Traffic impacts after Pac Bell Park events**
    - DPT's observations following events is that most SB Illinois traffic turns west on 18th and would not be impacted by Muni on Illinois.
  - **Access to Pier 70 Opportunity area**
    - The existing access to Pier 70 is via 20th St. A potential access via 18th would be possible since the existing single lane will remain. Mariposa St. also provides direct access from northbound 280.
  - **Loss of parking not identified in original plan**
    - The EIR identified 21 spaces to be removed; design changes identified an additional 11 on 18th and 19th.
  - **Loss of parking for residents, merchants and businesses**
    - Residential Permit Parking Zone may be created if requested by neighborhood
    - Timed color curbs zones and parking meters if requested by merchants
    - Working with Port to establish 90-degree parking on 23rd.
  - **Impact on Illinois truck route**
    - The same number of lanes will remain after the loop is installed. DPT has shown the truck route map to a representative of trucking industry who did not oppose it.
  - **Impact on the proposed bike lanes on Illinois**
    - There will be a minimum 4' wide area for bikes in both directions.
  - **Loop will be used during all hours of operation from 4AM to Midnight**
    - The Loop would only be used on weekdays from peak morning through peak evening hours.
  - **Loop will be used to store disable vehicles for the first 5 years before it is used for revenue service.**
    - If a vehicle is blocking the main revue track it could be moved onto the loop. However, it would be moved to the Metro East Maintenance facility as quickly as possible since the street is not the best place to make the repairs.

➢ **Community Proposals**
  - **Muni asked to put a station at the loop**
    - Provisions are being made to be able to build a single car platform. This includes cutting 5' from the existing 15' west sidewalk.

- **Move the loop to the Metro East Maintenance Facility**
  - MME is not set up to have revenue vehicles looping through the facility. There is the impact on main line service due to waiting to go through yard queues. There would also be additional capital cost of $17.5M for five vehicles (4 revenue and 1 spare) because of the additional distance and the need to maintain the same headway. There would also be the additional operating costs of $1.9M for the additional distance.
- **By the property on the south side of 18th between Third and Illinois**
  - This property was not for sale when the Loop was cleared and Muni did not contemplate locating the Loop in private property at a cost to the city.
- **Put the Loop in Mission Bay north of Mariposa**
  - The service would miss the Mariposa platform where there will be heavy Mission Bay ridership.
- **Move the Loop to 23rd /24th**
  - This would be incompatible with the garage movements of the commercial areas proposed recently. by private developers and the Planning Department as part of the Central Waterfront Plan on that block. There would also be additional capital cost of $7M for two vehicles because of the additional distance and the need to maintain the same headway. There would also be the additional operating costs of $1.4M for the additional distance.

➢ Commercial Issues

- **The proposed platform with close access to the existing fueling station**
  - Field observations with DPT, Muni and with a truck show that access is hindered but available with the proposed platform location.
- **Impacts to Research Magazine loading dock on 19th Street.**
  - Track alignment has been moved one foot to north to accommodate truck access to the loading dock.

➢ **Community outreach since EIS/EIR (after August 2000)**

  - Numerous meetings and letters (see attached document)

cc. Robert Rincon
Luz Cofresí-Howe
M522.W.3.301

LETTERS AND MEETINGS ON THE MISSION BAY TURNAROUND LOOP

8/8/00: Some Third Street CAG members identify the 18th/Illinois/19th Street location for the Mission Bay Turnaround Loop as an issue with the community.

8/10/00: Met w/ Port & DPT to discuss various options for the Loop.

8/10/00: Letter to Muni re the Turnaround Loop from John Borg, Co-Chair of the Potrero Central Waterfront Committee.

9/5/00: Meeting with the Dogpatch Association in response to John Borg's letter of 8/10/00 and phone requests from other Association members.

9/12/00: Letter from Muni in response to the Borg letter of 8/10/00.

9/26/00: Muni meeting on the Turnaround Loop at the California College of Arts and Crafts in Potrero Hill.

10/3/00: Meeting with Potrero Boosters, mainly to discuss the Turnaround Loop.

10/9/00: Letter to Muni re the Turnaround Loop from Rob Anderson of the Dogpatch Association.

10/11/00: Meeting with the Third Street Light Rail Community Advisory Group—Turnaround Loop discussed, as well as other items.

10/17/00: Letter from Muni in response to the Anderson letter of 10/9/00.

10/25/00: Letter to Muni on the Turnaround Loop from the Port.

10/25/00: Meeting with the Citizens Advisory Committee for the Transportation Authority. The CAC passed a resolution in support of the Turnaround Loop at the location identified in the EIS/EIR: 18th, Illinois and 19th Streets.

11/14/00: Letter to DPT on the Turnaround Loop from John Borg, Vice President of the Dogpatch Association.

11/14/00: Muni letter to S.F. Petroleum stating our proposed plans for the Turnaround Loop pursuant to meeting with fueling station owner 2 weeks earlier.

11/28/00: Letter from Muni to the Port re the Turnaround Loop.

12/18/00: Letter from DPT in response to the Borg letter of 11/14/00.

1/5/01: Letter from the Port requesting that Muni evaluate the installation of key stops at 18th and 19th Streets.

1/11/01: Site visit to the Turnaround Loop with Muni, DPT, Planning, and Port Representatives.

1/11/01: Meeting between Port and Muni in which Muni Operations were present to explain why key stops at 18th and 19th Streets and a station at Illinois St. are unfavorable.

1/26/01: Letter from Muni to the Port re a station at the Turnaround Loop.

2/6/01: Letter to Muni re the Turnaround Loop from Susan Eslick, President of the Dogpatch Association complaining that Muni has not been responsive on the Loop issue.

2/23/01: Letter to Susan Eslick, President of the Dogpatch Association from Michael Burns.

3/8/01: Meeting at City Hall in response to requests from Dogpatch and Potrero Hill Neighborhood Associations, including Supervisor Sophie Maxwell's aide.

3/15/01: Field trip to the Turnaround Loop with neighborhood representatives. Muni staff agrees to recommend that the Muni General Manager initiate a public process to construct a revenue stop at the Turnaround Loop across from Pier 70. Platform proposed in the sidewalk on Illinois Street close to 19th Street. Supervisor Maxwell's aide present.

3/19/01: Letter to Susan Eslick, President of the Dogpatch Association from Michael Burns, confirming the agreement to initiate a public process to construct a revenue stop at the Turnaround Loop.

4/4/01: Meeting with property owners of a parcel on Illinois and 19th Streets and the Fueling Station manager leasing that property re the Turnaround Loop and proposed Pier 70 platform.

4/25/01: Meeting between Port, DPT and Muni to discuss alternatives in preparation for 5/23/01 public meeting.

5/23/01: Meeting between Port, DPT and Muni to finalize preparation for 5/23/01 public meeting.

5/23/01: Public meeting co-sponsored by Muni and Port. Recommendation to construct platform in middle of Illinois Street near 19th Street, rather than sidewalk, to avoid conflict with fueling station operations. Majority of those attending support this option.

CS-132 QA & CM Contract for Third St. Light Rail Transit

Contract Value By Firms
May 14, 2003

Firm	Value	Percentage	DBE
Sverdrup Civil, Inc.	$4,182,421	27.6%	
The Allen group	$1,799,653	11.9%	11.9%
Geotopo Inc.	$100,000	0.7%	0.7%
Ghiradelli Engineering	$761,772	5.0%	5.0%
Inspection Consultants, Inc.	$300,000	2.0%	(pending)
KJM & Associates	$887,754	5.9%	
Primus Industries, Inc.	$3,223,645	21.2%	21.2%
Don Schluter; Yano & Assc.	$185,000	1.2%	
Subtronics Corp.	$125,000	0.8%	
Summit Associates	$1,942,422	12.8%	12.8%
Washington Infrastructure	$1,665,718	11.0%	
Subtotal	$15,173,385	100.0%	51.6%
Escalation	$826,615		
Total	$16,000,000		

Item 8 - File 03-0609

Department: Mayor's Office of Criminal Justice
Juvenile Probation
Department of Public Works

Item: Ordinance appropriating $45,000,000 from the sale of Certificates of Participation to fund the Juvenile Hall Replacement Project, placing $545,000 on reserve.

Amount: $42,052,080. Ms. Nadia Sesay of the Mayor's Office of Public Finance reports that Certificates of Participation (COPs) to fund the Juvenile Hall Replacement Project were sold on April 29, 2003 in accordance with prior approval by the Board of Supervisors (File 02-0851) with a par value of $41,965,000 and a net premium of $87,080[1], for total COPs proceeds of $42,052,080. Therefore, the proposed ordinance should be amended to provide for an appropriation in the amount of $42,052,080, or $2,947,920 less than the requested amount of $45,000,000.

Description: The appropriation of $42,052,080 in COP proceeds will be expended on the construction of a new Juvenile Hall facility at 375 Woodside Avenue, which replaces the existing Juvenile Hall facility at that location. The new Juvenile Hall facility will consist of 89,830 square feet and provide for 150 beds, compared to the existing facility, which consists of approximately 107,830 square feet and provides for 132 beds.

The Board of Supervisors previously approved financing for the Juvenile Hall Replacement Project through a series of resolutions and appropriation of grant funds. In June of 2002, the Board of Supervisors approved two resolutions, authorizing (a) the Mayor's Office of Criminal Justice to accept and expend a grant in the amount of $15,075,000 from the California Board of Corrections to pay for construction costs of a new Juvenile Hall facility (File 02-0852), and (b) issuance of Certificates of Participation in a principal amount not to exceed

[1] According to Ms. Sesay, the Mayor's Office of Public Finance offered COPs with a par value of $41,965,000, but was able to sell the COPs at a premium, resulting in total COP proceeds of $42,052,080.

$45,000,000 (recommended for amendment to $42,052,080) for the construction of a new Juvenile Hall facility (File 02-0851). The Board of Supervisors approved additional resolutions and appropriated grant funds, totaling $2,703,043 ($323,341 in Office of Criminal Justice Grants and $2,379,702 in State Controller Grants) in FY 1999-2000 and FY 2000-2001, resulting in total project funding of $59,830,123, as discussed below.[2]

Sources and Uses of Funds: The sources and uses of funds for the Juvenile Hall Replacement Project are as follows:

Source of Funds		
Certificates of Participation		$42,052,080
Board of Corrections Grant		15,075,000
Office of Criminal Justice Grants		323,341
State Controller Grants		2,379,702
Total Sources of Funds		$59,830,123
Uses of Funds		
COPs Issuance Costs		
Capitalized Interest	$4,239,544	
Debt Service Reserve Fund	2,627,798	
Costs of Issuance	365,000	
Underwriter's Discount	360,139	
Bond Insurance	530,000	
Unspecified Use of Funds	3,547	
Subtotal, COPs Issuance Costs		$8,126,028
Project Costs		
Juvenile Hall Construction	40,032,141	
Project Control	9,544,654	
Relocation	1,365,161	
Art Enrichment	288,568	
Hazardous Materials Abatement	216,171	
DTIS Services	257,400	
Subtotal, Project Costs		51,704,095
Total Uses of Funds		$59,830,123

[2] Total project funding of $59,830,123 is as follows: (a) $42,052,080 (recommended amended amount) in COP funds (File 02-0851), (b) $15,075,000 in the State Board of Corrections grant (File 02-0852); (c) three State Office of Criminal Justice Grants, totaling $323,341 (Files 99-1302, 00-0485, and 01-2140); and (d) two State Controller grants, totaling $2,379,702 approved in the Annual Appropriation Ordinance ($1,179,702 approved in FY 1999-2000 and $1,200,000 approved in FY 2000-2001).

Comments:

1. As shown above, COP issuance, capitalized interest, debt service reserve fund and other associated costs are $8,126,028. Ms. Sesay reports in Attachment I that such costs will be incurred as follows:

- $4,239,544 in capitalized interest will be used to pay interest only payments to service the COP debt during the approximately 27.5 month period from May 13, 2003 until the anticipated Substantial Completion of the Juvenile Hall construction project on September 1, 2005.[3] Page 1, line 20 of the proposed ordinance specifies $6,935,533 in "interest expense, capitalized assets" and therefore should be amended to reflect the correct capitalized interest amount of $4,239,544.

- $2,627,798 in the debt service reserve fund, which equals the maximum on one year's debt service payments. Page 2, line 8 of the proposed ordinance specifies $2,862,875 in "bond reserve payments" and therefore should be amended to reflect the correct amount of debt service reserves of $2,627,798.

- $1,255,139 in bond issuance costs, including:

  (a) $365,000 in bond issuance costs, which are detailed on page 3 of Attachment I.
  (b) $360,139 for the underwriter's compensation, or discount; and
  (c) $530,000 for bond insurance, which insures payment of principal and interest.

Page 2, line 10 of the proposed ordinance specifies $1,275,540 in bond issuance costs and therefore should be amended to reflect the correct amount of $1,255,139.

2. Mr. Clendinen advises that design and construction of the new Juvenile Hall will proceed in three phases, one preparation and design phase and two construction phases. Mr. Clendinen states that the Juvenile Hall preparation and design phase is estimated to be

[3] According to Mr. Eugene Clendinen of the Mayor's Office of Criminal Justice, the construction project is anticipated to take 27 months, which includes 18 months for Phase I and nine months for Phase II.

completed on June 9, 2003, and the Notice to Proceed for the construction of the new Juvenile Hall facility will be issued on or about June 19, 2003, upon approval of the proposed ordinance. Phase I of construction will include demolition of part of the existing Juvenile Hall facility, including one of six housing units, and construction of the new Juvenile Hall facility. Phase I will occur over an approximately 18 month period. Phase II of construction includes transfer of youth from the existing facility to the new facility and demolition of the remaining five of six housing units, abatement of hazardous materials, and construction of recreational areas. Phase II will occur over an approximately 9 month period. Mr. Clendinen estimates that construction of the new Juvenile Hall facility will be completed in approximately September of 2005.

3. According to Ms. Tina Olson of the Department of Public Works (DPW), DPW has selected a contractor through a competitive bidding process, S.J. Amoroso Construction Co., Inc., the low bidder. The construction budget is as follows:

Construction costs	$36,392,855
10% contingency	3,639,286
	$40,032,141

Attachment II, provided by DPW, is the list of bidders and the bid amounts for the construction contract.

4. Attachment III, provided by DPW, provides details of the above noted Project Control costs of $9,544,654 as follows:

(a) $3,922,300 in architectural and engineering services, which include designing the project, developing the scope of work for the construction bid, establishing environmental baselines and complying with the National Environmental Protection Act, and design and development of the relocation project (see Comment 5). Page 2 of Attachment III provides details of the architectural and engineering services.

(b) $504,496 for environmental management, which includes environmental surveys and data collection,

and monitoring of hazardous materials abatement and other environmental work. Page 3 of Attachment III provides details of environmental management.

(c) $971,014 for pre-construction project management, which includes DPW project management costs, regulatory agency fees, and services of City agencies, including the Department of Parking and Traffic, the Planning Department, the Office of Contract Administration, and the City Attorney's Office. Page 3 of Attachment III provides details of the pre-construction project management costs.

(d) $4,146,844 for the construction phase project and construction management. Pages 4 and 5 of Attachment III, contain details of the construction phase project management and construction management costs, including the hours and hourly rates for City employees, which total $2,756,170 of the $4,146,844 in construction phase expenditures.

5. Mr. Clendinen states that estimated relocation expenditures of $1,365,161, noted above, consist of (a) the purchase and build out of a pre-fabricated structure to house the Juvenile Hall Medical and Intake Units, and (b) temporary relocation of two Juvenile Courtrooms to a new location within the administrative building, located at 375 Woodside Avenue. According to Mr. Clendinen, Design Space Modular Building, Inc., was awarded a contract through a competitive bid process to construct the modular structure. The budget for the relocation project is as follows:

Design Space Modular Building	$1,184,528
Fire Alarm	38,500
DPW Costs for Juvenile Court Relocation	87,133
DTIS Costs of Telephone and Data Equipment Installation	55,000
Total Relocation Costs	$1,365,161

Mr. Clendinen advises that construction of the modular building was substantially completed on October 24, 2002, and relocation of the two Juvenile Courtrooms is expected to be substantially completed by approximately May 30, 2003, except for the construction of a witness stand and connection of telecommunication equipment.

6. Mr. Clendinen advises that an art enrichment project has been included in the proposed Juvenile Hall Replacement Project in compliance with Administrative Code Section 3.19, which requires the City to include art projects to a proposed construction project, equal to two percent of the estimated eligible construction costs before proposing a bond issue to pay for the construction project. According to Mr. Clendinen, the art enrichment project budget of $288,568 equals two percent of eligible construction costs of $14,428,387.[4]

Art Commission Fee	$74,568
Artist Fees	214,000
	$288,568

7. According to Ms. Olson, hazardous materials abatement will be conducted prior to the demolition of existing facilities, and includes abatement of lead, asbestos, polychlorinated byphenyls (PCBs), mercury, freon, and other hazardous materials from the site, at an estimated cost of $216,171. Ms. Olson advises that hazardous materials abatement has been performed by DPW's Bureau of Construction Management as-needed contractors, prior to Phase I of the construction work.

8. Mr. Clendinen advises that the Department of Telecommunication and Information Services (DTIS) will install wiring and telecommunication and data systems, with estimated costs as follows:

DTIS Personnel Costs		
Cable Splicer ($71 per hr for 1,494 hrs)	$106,074	
Senior Business Analyst ($108 per hr for 40 hrs)	4,320	
Subtotal		$110,394
Materials and equipment		123,606
Contingency (9 percent of total costs)		23,400
		$257,400

9. According to Mr. Clendinen, $5,534,527 has been expended to date on the Juvenile Hall Replacement

[4] According to Mr. Clendinen, the initial Juvenile Hall construction cost projections, developed in December of 1999, prior to the proposal for the subject COPs issuance, were $29,503,387, of which $15,075,000 in State Board of Corrections funding were not eligible, resulting in eligible construction costs of $14,428,387.

Project for design and engineering, and relocation costs. Mr. Clendinen states that expenditures of $5,534,527 include $2,703,043 in grant funds ($323,341 in Office of Criminal Justice grants and $2,379,702 in State Controller grants) and $2,831,484 in General Fund monies, all of which have been previously approved by the Board of Supervisors. Mr. Clendinen states that the subject COPs proceeds will reimburse the $2,379,702 to the General Fund, in accordance with File 02-0851, which authorized issuance of the subject COPs and authorized that the COP proceeds could be used to reimburse the General Fund for expenditures advanced by the General Fund.

10. The proposed ordinance requests $545,000 in reserved funds. Ms. Sesay states in Attachment I that the Mayor's Office of Public Finance initially requested the $545,000 as a reserve against increases in interest rates prior to the sale of the COPs, which would increase the par amount of the COPs. However, Ms. Sesay advises that because the COPs were sold on April 29, 2003, at a par amount of $41,965,000, the requested reserve is not needed. Therefore, the proposed ordinance should be amended to delete the reserve of $545,000.

Recommendations:

1. As noted on the first page of this item, amend the proposed ordinance to reduce the requested appropriation amount by $2,947,920, from $45,000,000 to $42,052,080.

2. As noted in Comment 1, amend the proposed ordinance to:

(a) delete $6,934,533 on page 1, line 20 and substitute $4,239,544;
(b) delete $2,862,875 on page 2, line 8 and substitute $2,627,798; and
(c) delete $1,275,540 on page 2, line 10 and substitute $1,255,139.

3. As noted in Comment 10, amend the proposed ordinance to delete the $545,000 reserve on page 2, line 15.

4. Approve the proposed ordinance as amended.

OFFICE OF THE MAYOR
SAN FRANCISCO

WILLIE LEWIS BROWN, JR.

DATE: May 14, 2003

TO: SEVERIN CAMPBELL
BUDGET ANALYST

FROM: NADIA SESAY

RE: CITY AND COUNTY OF SAN FRANCISCO CERTIFICATES OF PARTICIPATION, SERIES 2003
(JUVENILE HALL REPLACEMENT PROJECT)

Per your request, below are the responses to you questions.

Capitalized Interest • Under State law, the City cannot effect a lease unless the City has beneficial use and occupancy of the Project. During construction the City will not have 100% beneficial use of the new facility. However, investors expect to receive semi-annual payments of interest on their investment. As part of the borrowing, the City will borrow the interest to make such payments (approximately $4,239,544) during construction. Upon completion of construction, the City will make all lease payments from its general fund. Payments are as follows:

Payment Date	Interest Payment
9/1/03	$552,984
3/1/04	921,640
9/1/04	921,640
3/1/05	921,640
9/1/05	921,640
	$4,239,544

Debt Service Reserve Fund • Like any other commercial lease, investors require the City to make a security deposit equal to one year's rent. In bond terms, this is known as a debt service reserve fund. The fund will remain in place for the life of the COPs and be used to make the last year's payment. As part of the borrowing, the City will borrow funds ($2,627,797.50) to deposit in the debt service reserve fund. This represents the maximum annual debt service.

Costs of Issuance • The City will incur certain costs to issue the COPs which are paid upon the closing of the transaction. Such costs include rating agency fees, financial advisory fees, counsel

fees, trustee fees, etc. A complete listing of the estimated costs of issuances is attached as Exhibit A. As part of the borrowing, the City borrowed $365,000 to fund costs of issuance. Any amount remaining in the cost of issuance once all costs have been paid will be transferred to the base rental to be applied to the next debt service payment. Note that the Financial Advisors and Bond Counsel firms were hired through competitive solicitation processes held in 2000 and 1998, respectively. The trustee and printer were also hired through a competitive solicitation held in 2002 as well.

Additional Proceed • Bonds are sold in $5,000 increments and therefore there are always additional proceed less than $5,000 and in this case $3,546.72 which will be deposited in the cost of issuance fund.

The Reserve for Market Conditions • is the difference between the authorized par amount ($45,000,000) and the projected par amount **before** the bond sale. Since the certificates were sold on April 29, 2003 there is no need for the reserve. The final par amount is $41,965,000. The purpose of the reserve was to allow for flexibility to address market conditions. If interest costs are higher the par amount will increase accordingly. The par amount is driven by the interest rate environment. Since the certificates were sold on 4/29/03 the $545,000 reserved funds are not required at this time.

Underwriter's Discount • This is the compensation the purchasers of the certificates get from reselling the certificates to investors ($360,139.43 or 8.58 per $1000).

Bond Insurance • The bonds are underwritten by private insurance companies, which insure payment of principal and interest on our certificates. In a competitive sale, bond insurance is always at the bidder's option and it is typically a competitive bid and awarded by the purchaser to the lowest bidder (MBIA: $530,000). This makes the certificates more attractive in the secondary market. In the purchasers estimate they can get more money for insured bonds.

Please feel free to call me if you have any questions. Thank you.

Exhibit A

City & County of San Francisco
Certificates of Participation Series 2003 (Juvenile Hall Replacement Project)

Estimated Costs of Issuance		**Estimate**
FINANCIAL ADVISOR FEES	$	50,000
CO FINANCIAL ADVISORS		
Arimax		
Municipal Capital Management		
Expenses	$	1,000
BOND COUNSEL FEES	$	85,000
CO BOND COUNSELS		
Orrick Herrington & Sutecliff		
Law Offices of Lisa Quateman		
Fees	$	2,500
CITY ADMIN. (Public Finance)	$	50,000
Director of Public Finance		
Public Finance Staff		
CONTROLLER ADMIN.	$	15,000
Budget & Operations Mgr		
CITY ATTORNEY FEES	$	60,000
Finance		
Validation		
Construction Team		
RATING AGENCY FEES		
Standard & Poors	$	20,000
Moodys	$	11,500
Fitch	$	10,000
PRINTING	$	12,000
Printing of Preliminary Official Statement and Official Statements (POS/OS)		
ADVERTISING	$	2,500
ELECTRONIC POSTING	$	1,500
TRUSTEE	$	4,000
TITLE INSURANCE	$	28,500
ESCROW FEE	$	1,500
	$	355,000
CONTINGENCY	$	10,000
TOTAL COST OF ISSUANCE	**$**	**365,000.00**

JUVENILE HALL REPLACMENT PROJECT

BIDS RECEIVED 2/12/03

Bid Item	Quantities	Bid	Nibbi Bros. Construction	LOW BIDDER	S.J. Amoroso Construction Co., Inc.		Arntz Builders		Thompson Pacific Construction, Inc.
1	LS	1,916,862.00	1,916,862.00	1,600,000.00	1,600,000.00	1,822,933.00	1,822,933.00	1,800,000.00	1,800,000.00
2	LS	35,000.00	35,000.00	50,000.00	50,000.00	400,000.00	400,000.00	10,000.00	10,000.00
3.1	73,100	9.86	720,766.00	7.95	581,145.00	10.35	756,585.00	10.00	731,000.00
3.2	73,100	10.64	777,784.00	9.50	694,450.00	11.17	816,527.00	10.00	731,000.00
4	2,000	11.38	22,760.00	8.00	16,000.00	6.75	13,500.00	12.00	24,000.00
5	21,000	1.50	31,500.00	1.50	31,500.00	1.58	33,180.00	2.00	42,000.00
6	1,000	7.00	7,000.00	7.00	7,000.00	7.35	7,350.00	9.00	9,000.00
7	400	9.50	3,800.00	9.50	3,800.00	9.98	3,992.00	24.00	9,600.00
8	1,050	1.30	1,365.00	1.30	1,365.00	1.37	1,438.50	2.00	2,100.00
9	14,000	2.00	28,000.00	2.00	28,000.00	2.10	29,400.00	3.00	42,000.00
10	400	1.50	600.00	1.50	600.00	1.58	632.00	2.50	1,000.00
11	12	70.00	840.00	70.00	840.00	73.50	882.00	100.00	1,200.00
12	4,500	2.00	9,000.00	2.00	9,000.00	210.00	945,000.00	4.00	18,000.00
13	1,000	1.00	1,000.00	1.00	1,000.00	1.05	1,050.00	2.00	2,000.00
14	26	250.00	6,500.00	2.50	65.00	262.50	6,825.00	300.00	7,800.00
15	1,500	1.00	1,500.00	1.00	1,500.00	1.05	1,575.00	2.00	3,000.00
16	126	60.00	7,560.00	60.00	7,560.00	63.00	7,938.00	100.00	12,600.00
17	2,400	1.20	2,880.00	1.20	2,880.00	1.26	3,024.00	1.75	4,200.00
18	15	10.00	150.00	10.00	150.00	10.50	157.50	100.00	1,500.00
19	LS	39,247,211.00	39,247,211.00	33,480,000.00	33,480,000.00	32,441,965.00	32,441,965.00	34,948,000.00	34,948,000.00
20	Allowance	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00
TOTAL BASE BID:			42,922,078.00		36,616,855.00		37,393,954.00		38,500,000.00
				LOW BIDDER					
Alt No. A-1		22,998.00	22,998.00	86,350.00	86,350.00	29,500.00	29,500.00	100,000.00	100,000.00
Alt No. A-2		20,355.00	20,355.00	7,150.00	7,150.00	6,900.00	6,900.00	20,000.00	20,000.00
Alt No. A-3		49,048.00	49,048.00	33,000.00	33,000.00	25,000.00	25,000.00	35,000.00	35,000.00
Alt No. A-4		17,167.00	17,167.00	17,600.00	17,600.00	24,000.00	24,000.00	120,000.00	120,000.00
Alt No. A-5		130,796.00	130,796.00	136,400.00	138,400.00	366,200.00	366,200.00	120,000.00	120,000.00
Alt No. A-6		222,353.00	222,353.00	231,000.00	231,000.00	219,300.00	219,300.00	210,000.00	210,000.00
Alt No. D-1		(80,000.00)	(80,000.00)	(138,000.00)	-138,000.00	(36,550.00)	(36,550.00)	(11,000.00)	(11,000.00)
Alt No. D-2		(3,270.00)	(3,270.00)	3,150.00	3,150.00	(5,000.00)	(5,000.00)	(3,000.00)	(3,000.00)
Alt No. D-3		0.00	0.00	2,500.00	2,500.00	(6,500.00)	(6,500.00)	(6,000.00)	(6,000.00)
Alt No. D-4		(90,000.00)	(90,000.00)	(61,200.00)	-61,200.00	(18,000.00)	(18,000.00)	(30,000.00)	(30,000.00)
Alt No. D-4B		(83,975.00)	(83,975.00)	(30,450.00)	-30,450.00	(6,200.00)	(6,200.00)	(20,000.00)	(20,000.00)
Alt No. D-5	Not Used		-	Not Used	0.00	Not Used	-	Not Used	-
Alt No. D-6		0.00	0.00	0.00	0.00	(2,000.00)	(2,000.00)	(10,000.00)	(10,000.00)
BASE BID + ALTERNATES			$43,127,550.00		$36,904,355.00		$37,990,604.00		$39,025,000.00
				LOW BIDDER					

low base bid	36,616,855.00
deductive alternates	-224,000.00
Contract Award Amount	36,392,855.00

Juvenile Hall Replacement Project
Project Control Budget

Project Control Costs		
Architect and Engineering Services		
Architect and Engineering Services Contract	$3,315,100	
Project Development:DPW and As-need Consultants	164,412	
Design and Bid Phase: DPW and As-needed Consultants	264,850	
Architect and Engineering Services for Relocation	177,938	
		$3,922,300
Environmental Management		
Geotechnical, Surveys, and Data: DPW and As-needed Consultants	184,768	
Environmental Monitoring: DPW and Contract Services	319,728	
		504,496
Pre-Construction Phase		
DPW Pre-construction Project Management Costs	597,680	
Regulatory Agency Fees	286,234	
City Attorney	5,100	
Other City Agencies (DPT, Purchasing, Disability Access,)	82,000	
		971,014
Construction Phase		
Construction Phase City Staff	2,756,170	
Construction Management Contract	1,350,354	
Site Control and Contingency	40,320	
		4,146,844
		$9,544,654

Provided by the Mayor's Office of Criminal Justice and the Department of Public Works
5/14/03

Responses to Budget Analyst Questions
May 12, 2003

Question; Please provide budget details for total project costs. Describe all work orders including cost of work, scope of work and related department. For all City personnel, please provide classifications and titles, FTEs, and salary.

Architectural and Engineering Services: $3,922,300

Consulting Architectural & Engineering Services: $3,315,100

The joint venture team of Del Campo & Maru / Design Partnership was selected in November 1999 by means of a Request for Qualifications advertised by the Department of Public Works. The scope of services includes the Design Phase: Programming & Planning; Design and Construction Documents; and the Construction Phase: Bid & Award; Construction Administration and Warranty Review. The contract is for a lump sum amount of $3,315,100 including fees in the amount of $3,146,400 (Basic + Additional Services) and reimbursable expenses of $168,700. The contract terms call for a guaranteed maximum cost based on hourly billing rates. The table below shows services during the Construction Phase.

Del Campo & Maru / Design Partnership Juvenile Hall Replacement Project Construction Administration Phase			
POSITION	Billing Rate	TOTAL MNHRS	TOTAL BILLING
Principal	$138.28	200	$27,656
Senior Associate	$128.25	200	$25,650
Senior Architect	$118.53	1,500	$177,795
Intermediate Designer	$93.88	2,500	$234,700
Senior Engineer	$118.51	1,250	$148,138
Associate Engineer	$93.82	2,000	$187,640
Subtotal		**3,890**	**$801,580**
Reimbursable Expense Allowance			**$9,000**
Grand Total			**$810,580**

Other Architectural and Engineering Services

Project Development: $164,412

These include the costs to develop and design the project in preparation for the bid. $20,682 is for DPW Bureau of Architecture costs, $15,983 for consultant work related to the National Environmental Protection Act, and $127,747 for DPW Bureau of Construction Management/ Site Assessment and Remediation to establish environmental baselines and specifications.

Design and Bid Phase: $264,850

These include DPW and as-needed consultant costs to develop the initial design and scope of work for the bid process.

Architect and Engineering Services for Relocation: $177,938

These are project control costs for the construction of the modular facility for the medical and intake units and the temporary costs of relocating two Juvenile Courts. These costs include $131,035 for the DPW Bureau of Architecture costs of designing tenant improvements, $11,903 for consultant costs for soil studies at the modular facility location, $15,000 for DPW Bureau of Construction Management

costs to manage the temporary relocation of the Juvenile Courts, and $20,000 for DPW Bureau of Architecture costs for construction administration.

Environmental Management: $504,496

Geotechnical analysis, surveys and data collection: $184,768

This includes geotechnical, civil, topographic, building systems, and hazardous materials surveys and assessments conducted by the DPW Bureau of Engineering and as-needed consultants.

Environmental Monitoring: $319,728

Environmental Consultants: Hazardous Materials: $135,000

The scope of work includes monitoring and reporting on abatement work that is included in the construction contract to be performed by the general contractor at the beginning of Phase Two construction in late 2004. Consultants for oversight of hazardous materials abatement will be selected by DPW Bureau of Construction Management / Site Assessment and Remediation. Estimated fees for construction phase services amount to $135,000.

Environmental Consultants: Environmental Management: $180,000

The scope of work will include monitoring and reporting on construction activities for compliance with required mitigation measures for noise, air quality, and removal / disposal of Class II soils during Phase One and Phase Two construction. Environmental and acoustical consultants will be selected by DPW Bureau of Construction Management / Site Assessment and Remediation in June 2003. Estimated fees for construction phase services amount to $180,000.

DPW costs: $4,728

Pre-Construction Phase Costs: $971,014

DPW Pre-construction Management Costs: $597,680

This includes the costs of DPW project management and engineering staff to work with the client department in planning the project and developing the program, hiring and monitoring the project consultants, coordinating the client department and the outside consultants, working with regulatory agencies, and developing and reviewing required documents.

Regulatory Agency Fees: $286,234

City Attorney Fees: $5,100

Work of Other Agencies: $82,000

Includes pre-construction work of the Department of Parking and Traffic, the Planning Department, and the Purchaser.

Construction Phase Management: $4,146,844

Project Site and Contingency: $40,320

This includes $6,000 for the Division of Real Estate, and $34,320 for project contingency.

City Staff Costs (see Attachment I, page 2): $2,756,170

Consulting Construction Management Services: $1,350,354

The joint venture team of Don Todd Associates / NBA Engineering was selected in March 2003 by means of a Request for Qualifications advertised by the Department of Public Works. Services will be provided during the construction phase of the project. The budgeted contract amount is $1,350,353 including fees in the amount of $1,330,354 and an allowance of $20,000 for reimbursable expenses. The contract terms call for a guaranteed maximum cost based on hourly rates as noted in the table below.

Don Todd Associates, Inc./NBA Engineering Juvenile Hall Replacement Project Calculation of Charges			
POSITION	**Billing Rate**	**TOTAL MNHRS**	**TOTAL BILLING**
Principal in Charge	$170.00	190	$32,300
Construction Administrator	$155.20	2,160	$335,232
Estimator	$101.85	1,540	$156,849
Subtotal		**3,890**	**$524,381**
Document Control	$72.75	1,300	$94,575
Scheduler	$135.80	760	$103,208
Office Engineer/CO Negotiator	$116.40	3,295	$383,538
Field Superintendent	$116.40	965	$112,326
Field Superintendent	$116.40	965	$112,326
Subtotal Labor		**11,175**	**$1,330,354**
Reimbursable Expense Allowance			**$20,000**
Grand Total			**$1,350,354**

JUVENILE HALL REPLACEMENT PROJECT
CONSTRUCTION PHASE BUDGET
CITY STAFF POSITIONS

Department / Title	Class	Rate	Estimated Hours	Detail Budget	Total Budget	Description
Mayor's Office of Criminal Justice						
Special Assistant XIII	1372	$50	4040		**200,000**	Client department project management
Department of Public Works				**2,010,227**	**2,010,227**	
Project Manager II	5504	$131	3179	416,414		Project Management.
Principal Engineer	5212	$154	147	22,645		Project Management: Planning & Control
Principal Engineer	5212	$155	535	82,948		Contract Manager: Construction Management
Engineer	5141	$116	5031	583,609		Resident Engineer: Construction Management
Building Inspector	6331	$106	4473	474,159		Construction Inspector: Construction Management
Contract Compliance Rep.	2996	$46	2495	114,784		Certified Payroll: Construction Management
Junior Clerk	1402	$46	2495	114,784		Certified Payroll: Construction Management
Construction Inspector	6318	$95	465	44,188		Environmental Monitoring & Control
Regulatory Specialist	5260	$73	2011	146,805		Environmental Monitoring & Control
Accountant	1634	$69	64	4,417		Environmental Monitoring & Control
Manager	2488	$114	48	5,473		Environmental Monitoring & Control
City Testing Lab				**237,375**	**237,375**	
Associate Engineer	5207	$95	300	28,500		Materials Testing: Construction Management
Materials Testing Technician	5305	$69	400	27,600		Materials Testing: Construction Management
Materials Testing Aide	5304	$65	400	26,000		Materials Testing: Construction Management
As-Needed Testing Contract				155,275		Materials Testing: Construction Management
Department of Building Inspection				**229,568**	**229,568**	
Electrical Inspector	6248	$85	1350	114,784		Field Engineer: Construction Management
Plumbing Inspector	6242	$85	1350	114,784		Field Engineer: Construction Management
City Attorney				75,000	75,000	Legal advice to Project Mgt. and Construction Mgt.
Deputy City Attorney	8180	$183	248	45,293		1.5 hrs/week for 165 weeks
Deputy City Attorney	8183	$200	83	16,500		.5 hrs/week for 165 weeks
Legal service to 4/25/03				13,207		hourly rates as noted above
Human Rights Commission					**4,000**	lump sum fee for contract compliance
Contract Compliance Officer	2996	$46				
Total					**$2,756,170**	

Item 9 - File 03-0683

Department: Superior Court

Item: Ordinance appropriating $150,000 from the Child Support Services Fund and $1,050,000 from the General Fund Reserve for a total of $1,200,000 to pay for a projected FY 2002-2003 shortfall in legal expenses associated with the Conflicts Panel (Indigent Defense) Program.

Amount: $1,200,000

Source of Funds: $150,000 from Child Support Services Fund
$1,050,000 from the General Fund Reserve

Description: The Public Defender's Office provides legal defense services to indigents who have been charged with a crime. If the Public Defender's Office determines that a conflict of interest would result if the Public Defender were to serve as the defense attorney, then the Superior Court appoints a private defense attorney through the Superior Court's Indigent Defense Program ("Conflicts Panel"). The Superior Court pays the fees for such private defense attorneys at a rate determined by the Superior Court.[1]

Although the Superior Court receives most of its funding through the State Trial Court Funding Program, the Indigent Defense Program is funded entirely by the City's General Fund.

The Superior Court is requesting this $1,200,000 Supplemental Appropriation in order to pay for a projected shortfall of $1,370,317 for indigent defense costs for adult criminal and juvenile delinquency cases (see Comment 1).

Comments: 1. The FY 2002-2003 budget for the Indigent Defense Program is $6,828,582. According to Mr. Neal Taniguchi

[1] The Superior Court has set a variety of hourly rates for Indigent Defense Program services, ranging from $45 per hour for private investigators, $55 per hour for adult and juvenile misdemeanors, $70 per hour for juvenile felonies, $75 per hour for preliminary hearings, felonies, conservatorships, and other hearings, $85 per hour for serious juvenile felonies, $90 per hour for serious adult felonies, and $125 per hour for capital felonies.

of the Superior Court, FY 2002-2003 Indigent Defense Program expenditures are estimated to be $8,198,899, which is $1,370,317, or approximately 20 percent more than FY 2002-2003 budgeted expenditures. Mr. Taniguchi advises that the projected shortfall of approximately $1,370,317 has resulted from:

- Approximately $486,000 in unpaid FY 2001-2002 Indigent Defense Program bills which were carried forward to FY 2002-2003 (see Comment 2), and
- Approximately $884,317 more in FY 2002-2003 Indigent Defense Program billings than had been anticipated in the FY 2002-2003 budget.

2. As noted in the Attachment, Mr. Taniguchi advises that the Superior Court carried forward into FY 2002-2003 approximately $486,000 in unpaid FY 2001-2002 legal bills because the FY 2001-2002 budget was not sufficient to pay for such bills in FY 2001-2002.

3. As noted in the table below, the number of adult criminal and juvenile delinquency cases referred by the Public Defender to the Indigent Defense Program increased by 579 cases, or 22.1 percent, from 2,620 cases in FY 2000-2001 to 3,199 cases in FY 2001-2002.

Fiscal Year	Number of Cases Referred		
	Adult Criminal	Juvenile Delinquency	Total
FY 1998-1999	3,786	194	3,980
FY 1999-2000	2,814	208	3,022
FY 2000-2001	2,399	221	2,620
FY 2001-2002	3,012	187	3,199

In FY 2002-2003, based on the number of Public Defender cases referred to the Indigent Defense Program as of April 30, 2003, Mr. Taniguchi estimates 3,336 referrals in FY 2002-2003, which is 137, or 4.3 percent, more referrals than the 3,199 referrals in FY 2001-2002.

4. The proposed supplemental appropriation ordinance is requesting $1,200,000, in FY 2002-2003, which is $170,317 less than the projected FY 2002-2003 Indigent

Defense Program shortfall of $1,370,317. As noted in the Attachment, the Superior Court anticipates that the year-end closing adjustments of the Superior Court's accounts will provide sufficient funds to pay the remaining balance of approximately $170,317.

5. According to the Public Defender, Mr. Jeff Adachi, the Public Defender's Office is proposing 16 new positions in the FY 2003-2004 budget, with an estimated FY 2003-2004 salary and fringe benefit cost of approximately $929,946[2] to reduce the average number of cases handled by each staff attorney. Mr. Adachi estimates that the 16 requested new positions will result in reduced referrals to the Indigent Defense Program. According to Mr. Adachi, although generally the Public Defender only refers cases to the Indigent Defense Program if an ethical conflict exists, the Public Defender has referred cases to the Indigent Defense Program because of lack of adequate staffing or high caseloads. Mr. Adachi projects that FY 2003-2004 Indigent Defense Program expenditures to be paid by the Superior Court will be $7,194,852, which is $1,004,047, or 12.2 percent, less than the projected FY 2002-2003 expenditures of $8,198,899. Therefore, the estimated net savings to the General Fund, according to Mr. Adachi, will be $74,101 ($1,004,047 savings less $929,946 in additional salaries and fringe benefits for 16 new positions) in FY 2003-2004. The Budget Analyst will evaluate this matter during the forthcoming FY 2003-2004 budget review of the Public Defender and the Superior Court.

Recommendation: Approve the proposed supplemental appropriation.

[2] Salary and fringe benefit estimates are based on (a) a one percent Cost of Living Adjustment, effective June 30, 2003, (b) step 3 in the salary range, (c) $4,469 annual medical and dental costs plus 7.65 percent of salary for Medicare and Social Security costs, and (d) hire dates of October 1, 2003, for the following positions: one senior attorney, two trial attorneys, two civil attorneys, nine paralegal positions, and two investigator positions.

Superior Court of California
County of San Francisco

GORDON PARK-LI
CHIEF EXECUTIVE OFFICER

May 14, 2003

Severin Campbell, Budget Analyst's Office
San Francisco Board of Supervisors
1390 Market St. Fox Plaza
San Francisco, CA 94102

RE: File 03-0683 – Supplemental Appropriation Request of $1.2 million for indigent defense expenditures

Dear Ms. Campbell:

You have requested a memorandum regarding the Court's supplemental appropriation request in the amount of $1,200,000 for indigent defense expenditures. As you know, under State law, the cost of indigent defense is a county responsibility.

The Court experienced greater than anticipated conflict attorney expenses because of two reasons.

- Carry-forwards - Approximately $486,000 in conflict bills from FY2001-02 were shifted to the current year for payment because the FY2001-02 appropriation was exhausted. Over $200,000 of these bills were due to the much publicized dog mauling case, which could not be planned for in last year's budget

- Increased conflict referrals - the Court experienced a large increase in conflicts declared by the Public Defender. During the first half of the fiscal year, the number of conflict cases paid increased by over 50%, and coincides with an increase in conflict case appointments that began in 2001. That conflict appointment rate began to increase in April, 2001, and has remained high through April, 2003.

Projected FY2002-03 expenditures: The Budget Analyst notes that projected over-expenditures in the indigent defense budget could exceed $1,370,317, or $170,317 more than the $1,200,000 supplemental appropriation request. The Court agrees with this analysis, and notes that given the unpredictability of attorney billing submittals, the $1.2 million request was the best estimate at the time the request was made in February, 2003. The Court expects that anticipated year-end close outs will cover the approximately $170,317.

(415) 551-5737 400 McAllister Street San Francisco, CA 94102-4514 Fax (415) 551-5701

Severin Campbell, Budget Analyst's Office
San Francisco Board of Supervisors
May 14, 2003
Page Two

FY2003-04 Budget: The Court has cooperated with the Mayor, the Controller's Office, and the Public Defender in reviewing the cost of indigent defense and to attempt to improve the efficiency of the program. The Court has submitted a budget request of $7,806,400, which is $1 million more than the original budget appropriation for indigent defense. The increase consists of the following:

- Approximately $350,000 for administration of the conflicts program by the Bar Association of San Francisco (BASF). Under State Trial Court Funding, the Court is precluded from paying for costs that are a county responsibility, including administrative costs. The proposal, which is supported by the Mayor's Office and the Public Defender, is to shift the administration of indigent defense to the BASF, from the Court. The Court would administer a contract with BASF, on behalf of the City and County.

- Approximately $650,000 to pay for the costs of conflicts resulting from the high rate of appointments made during the current fiscal year. While it is nearly impossible to predict the length of time criminal cases take to resolve, the Court is finding that it receives billings for conflict appointments as much as 12 months after the appointments. Therefore, the cost of indigent defense will continue to be high for nearly all of FY2003-04, and even if the Public Defender receives additional staffing to manage the caseloads.

The Court emphasizes that these estimates were made in early February, before much of the planning work on the indigent defense program was completed by the Mayor's Office, Controller's Office, and the Public Defender.

If you should have further questions, please contact Neal Taniguchi of my staff at 551-5727.

Sincerely,

Gordon Park-Li
Chief Executive Officer

cc.: Presiding Judge Donna Hitchens
Assistant Presiding Judge Robert Dondero
Supervising Criminal Master Calendar Judge Ksenia Tsenin

Item 10 - File 03-0730

Department:	Department of Administrative Services, Real Estate Division San Francisco Redevelopment Agency
Item:	Resolution approving the sale of real property, commonly known as Assessor's Block 3740, Lot 27 (consisting of approximately 34,057 square feet and located along the west side of Spear Street between Folsom and Howard Streets), by the City through the Real Estate Division (RED) to the San Francisco Redevelopment Agency (SFRA) in the amount of $10,034,140.
Location:	Assessor's Block 3740, Lot 27, located along the west side of Spear Street between Folsom and Howard Streets
Square feet:	Approximately 34,057 square feet of vacant land
Sale price:	$10,034,140, or approximately $294.63 per square foot
Description:	The City owns vacant property, currently under the jurisdiction of the Department of Public Works, consisting of approximately 34,057 square feet, located along the west side of Spear Street between Folsom and Howard Streets. This property is located within the Transbay Redevelopment Survey Area and the Redevelopment Agency proposes to purchase the property for the development of affordable housing.
Comments:	1. According to Mr. Olson Lee of the SFRA, the SFRA will purchase the subject property with tax-increment monies previously approved by the Board of Supervisors in the FY 2001-2002 SFRA budget. Mr. Lee reports that the SFRA proposes to use the subject property for the development of affordable housing, and will include the affordable housing development in the Transbay Redevelopment Plan, which the SFRA expects to submit to the SFRA Commission for adoption in approximately December of 2003. Mr. Lee reports that the proposed development would include approximately 272 apartments, but that the SFRA has not completed studies as to whether the 272 apartment development would be 100 percent affordable housing or mixed-income housing.

2. According to Mr. Larry Ritter of the RED, the California Department of Transportation (CalTrans) deeded the subject parcel to the City at no cost in 1997. Mr. Ritter states that an outside consultant, Carneghi-Bautovich and Partners, Inc., determined that the subject property has a fair market value as of January 13, 2003 of $11,560,000. The proposed sale price by the City to the SFRA of $10,034,140 is $1,525,860, or approximately 13.2 percent, less than the fair market value. According to Mr. Ritter, the reduced sales price is to account for estimated soil remediation costs to be paid by the SFRA. Mr. Ritter states that an outside consultant, Treadwell and Rollo, determined that, based on an Environmental Site Assessment, the estimated cost to mitigate hazardous soils on the subject property is $1,525,860.

3. According to the "Agreement for Purchase and Sale of Real Property", the SFRA will pay all title insurance and escrow costs. Mr. Donell Choy of the City Attorney's Office advises that the property is to be sold "as is" and that the City will not incur costs from the sale of the subject property.

4. According to Mr. Ben Rosenfield of the Mayor's Office, the sale proceeds of $10,034,140 will be distributed as follows:

- $12,500 for RED administrative costs plus approximately $3,800 for City Attorney costs, totaling $16,300, related to the sale of the property;
- $1,100,000 to the Department of Public Works (DPW) for the partial repayment of a San Francisco Transportation Authority loan for the Mid-Embarcadero Roadway Project (see Comment 5); and
- $8,917,840 to the General Fund. According to Mr. Rosenfield, this specific revenue was appropriated as a General Fund revenue source for FY 2002-2003.

5. According to Mr. Rosenfield, DPW received $12,624,921 of Proposition B Sales Tax monies from the San Francisco

Transportation Authority[1] to purchase land and construct the Mid-Embarcadero Roadway Project, and was to repay $5,600,000 of the $12,624,921 loan with proceeds from the sale of the parcels of land, which were formerly the right-of-way to the Embarcadero Freeway, deeded by CalTrans to the City at no cost to the City. Mr. Rosenfield states that $1,100,000 of the proceeds from the sale of the subject property would be used to partially repay the loan from the San Francisco Transportation Authority.

Recommendation: Approval of the proposed resolution is a policy matter for the Board of Supervisors.

[1] The San Francisco voters approved Proposition B in 1989, which levied a 0.5 cent Sales Tax to fund transportation projects.

Item 11 - File 03-0752

Department:	Administrative Services, Real Estate Division (RED) Public Library
Item:	Resolution authorizing the execution and performance of an Agreement of Purchase and Sale for Real Estate between the City and County of San Francisco, on behalf of the Public Library (the "Purchaser"), and Mr. Georges A. Yasbek (the "Seller"), for the purchase of real property and improvements located at 1298 Ocean Avenue, San Francisco, where the new Ingleside Branch Library of the San Francisco Public Library will be located; adopting findings under the California Environmental Quality Act; and adopting findings that the conveyance is consistent with the City's General Plan and Eight Priority Policies of City Planning Code Section 101.1.
Description:	Approval of the proposed resolution would authorize the Director of Property to acquire the property located at 1298 Ocean Avenue on behalf of the Public Library for the development of a new Ingleside Branch Library. The property located at 1298 Ocean Avenue comprises (a) 11,120 square feet of land, and (b) buildings occupied by Sunset Auto, a business owned by Mr. Georges A. Yasbek (the Seller). The buildings will be demolished. The Ingleside Branch Library is currently located in a leased 5,000 square foot facility at 1649 Ocean Avenue for which the Public Library pays approximately $7,879 per month, or approximately $1.58 per square foot per month.
Location:	1298 Ocean Avenue, at the northwest corner of Plymouth Street and Ocean Avenue, San Francisco.
Seller:	Mr. Georges A. Yasbek.
Buyer:	City and County of San Francisco
Purchase Price:	$1,850,000 for the 11,120 square foot property located at 1298 Ocean Avenue (approximately $166.37 per square foot), plus $375,000 for closing and related costs as detailed in Attachment I, a memorandum provided by Mr.

George Nichols of the Public Library. This results in a total property acquisition cost of $2,225,000.

Source of Funds: Mr. Nichols advises that the property acquisition cost of $2,225,000, and the estimated construction costs of $2,618,000, for the new Ingleside Branch Library building, for a total project cost of $4,843,000, will be funded from the Public Library project budget of $118,265,000 for all of the Public Library's Branch Library Improvements. That budget of $118,265,000 comprises Proposition A Bond funds ($105,865,000), Earthquake Safety Program Bond funds ($2,400,000), and State Proposition 14 Bond funds ($10,000,000).

In the Budget Analyst's August 21, 2002 report to the Finance Committee on the proposed sale of Branch Library Facilities Improvement Bonds, 2000 (File 02-1313), the Public Library advised that the Ingleside Branch Library project would cost $1,770,000 for the purchase price and related costs and $2,618,000 for the construction of the new building, for a total estimated project cost of $4,388,000. The current estimated project cost of $4,843,000 is $455,000 more than the previously estimated total project cost of $4,388,000, as explained in Attachment I.

Comments:

1. Attachment II is a memorandum provided by Mr. Charlie Dunn of the Real Estate Division, containing additional information about the proposed property acquisition. Mr. Nichols advises that construction of the new Ingleside Branch Library is currently scheduled to begin in April of 2006 with an estimated completion date of October of 2007. Mr. Nichols estimates that the new Ingleside Branch Library will become operational in January of 2008.

2. In Attachment III, Mr. Dunn reports that the proposed purchase price of $1,850,000 represents fair market value.

3. On February 12, 2003, the Department of City Planning found that the proposed acquisition of 1298 Ocean Avenue is consistent with the City's General Plan and the Eight Priority Policies under Planning Code Section 101.1.

4. On February 18, 2003, the Department of City Planning found that the proposed acquisition of 1298 Ocean Avenue is categorically exempt from environmental review under the California Environmental Quality Act because it has no potential for causing a significant effect on the environment.

Recommendation: Approve the proposed resolution.

Attachment I
Page 1 of 2

San Francisco Public Library
100 Larkin Street, San Francisco, CA 94102

May 15, 2003

TO: Alan Gibson, Budget Analyst
Budget Analyst's Office

FR: George Nichols, Finance Director

RE: **INGLESIDE PURCHASE AND SALE AGREEMENT (PSA)**

As noted in your report, Ingleside project costs have increased by $455,000 – from $4,388,000 to $4,843,000. The increase is related to higher than expected land costs and lower than expected costs for closing, title insurance, appraisal, City Attorney, demolition, utility connection fees, surveys, due diligence, and feasibility studies. The original budget estimate prepared in the spring of 2000 assumed land costs of $1,125,000 and related site acquisition costs of $645,000 for a total cost of $1,770,000. Actual costs in 2003, based on the 1298 Ocean Avenue site are $1,850,000 for the land and $375,000 for related site acquisition costs for a total cost of $2,225,000. A summary of related site acquisition costs is attached.

The additional $455,000 needed for this project will come from reserve funds established in the overall program budget. The reserve funds utilized for the 1298 Ocean Avenue purchase were created by redirecting funds from monies budgeted for bond issuance. The original budget assumed annual bond issues and issuance costs of $2.915 million over the life of the bond program. The current budget assumes biennial bond issues and issuance costs over the life of the bond program of $1.5 million.

With respect to State Proposition 14 Bond funds, the Library will submit an application to the State for this project as well as five other projects. Combined, these applications total about $20 million in requests for State funds. Application for the Ingleside project will be made in January 2004. Given that the State Bond Program will fund 65% of a project's cost, the Library's application for the Ingleside Branch Library Project will be for $2.9 million, exclusive of furniture. Assuming receipt of the $2.9 million, the balance of funds for this project will come from Proposition A Bond funds.

With regard to construction, if the Library is successful in its application for State Proposition 14 funds, construction would commence in 2006 and be completed at the end of 2007. If unsuccessful, construction may be delayed until 2007, making the new branch library operational in 2009. If Proposition 14 funds are not obtained for this project the entire project would be funded by Proposition A Bond funds. As indicated, the Library is making multiple applications to the State for approximately $20 million and is hopeful that the goal of $10 million in State funds set for the Branch Library Improvement Program will be achieved

The existing lease for the Ingleside Branch Library located at 1649 Ocean Avenue runs through August 31, 2010. If the new branch library is completed and occupied prior to the lease termination date, funds to cover the lease would be budgeted and paid from the Library Preservation Fund. If the new Ingleside Branch Library opened in January 2008, the earliest anticipated opening, the existing lease would have 32 months remaining before termination. At $7,879.11 per month, the remaining lease obligation would total $252,131. If the new Ingleside Branch Library opened in January 2009, the existing lease would have 21 months remaining before termination and the remaining lease obligation would total $165,461. Under both scenarios, the Library would make every effort to negotiate an early lease termination with the landlord or find another City department to assume the lease. Mr. Charles Dunn of the Real Estate Department has advised us that the Department of Public Health (DPH) has expressed an interest in the 1649 Ocean Avenue site. DPH leases a nearby property with a lease expiration date of February 28, 2004 and an option to renew through February 2009.

INGLESIDE BRANCH LIBRARY

Associated Property Acquisition Costs	Amount
Closing costs [4]	$1,350
Title Insurance [4]	6,965
Appraisal [3]	4,500
City Attorney services [3]	17,410
Site Preparation [1]	200,000
Phase I Environmental Study [3]	32,825
Boundary Survey [3]	7,140
Feasibility Study [3]	45,205
Removal of CC&R restrictions [2]	1,868
CEQA & Re-Zoning for Building [2]	55,000
CEQA & General Plan Referral for Property Acquisition [2]	2,737
Total:	**$375,000**

1 Estimated, includes demolition, removal of paving, disposal fees, abatement, utility connection fees, safety fencing, signage.
2 Estimated
3 Paid or Quoted
4 Title Insurance includes City credit for Transfer taxes. Closing Costs includes half Escrow & Recording Fees.

City and County of San Francisco

Real Estate Division
Administrative Services Department

May 14, 2003

To: Alan Gibson
Budget Analyst

From Charlie Dunn
Real Estate Division

Re: Determination of Fair Market Value
Ingleside Branch Library Acquisition

Per your request, the following is information on the selection process for the Ingleside Branch Library Acquisition

Real Estate surveyed the Ingleside District for suitable sites on a parcel-by-parcel basis. Minimum square footage was approximately 8,000 sf.

The Real Estate Division used the following criteria for the **elimination** of potential acquisition sites:

1) Residential Zoning. Properties with current residential only zoning have been eliminated.

2) Existing Residential Uses in Commercial and Mixed Commercial Zoning. With the extreme shortage of housing, residential and residential over commercial sites were eliminated.

3) Vital Existing Neighborhood-Serving Business and Institutions. The Real Estate Division attempted to be sensitive to the character of each Neighborhood and vital community serving businesses. Examples of such uses are churches, day care facilities, and grocery stores.

4) Architecturally Significant Buildings. Properties considered by the Planning Department to be "architecturally significant" in their own right or significant to the context of the neighborhood were not considered appropriate for demolition and were eliminated.

The above elimination criteria is not only common sense but these components also make up three of the City's eight priority items required by the Department of City Planning for the required General Plan Referral.

After elimination of sites, Real Estate then gave preference to the remaining Ingleside sites with the following characteristics:

(415) 554-9850
FAX: (415) 552-9216

Office of the Director of Property
25 Van Ness Avenue, Suite 400
San Francisco, 94102

1) Transit Location. The City has a Transit-First policy. Sites on municipal transit lines were given the highest priority.

2) Corner Locations. Corner sites offer the ability to provide easier "second exiting" for fire codes and were considered superior to interior sites.

3) Zoning. Existing commercial (or public) zoning was considered important to minimize conflicts with surrounding uses.

4) Vacant or underutilized land. Demolition costs are a component of the overall project costs. Since funding not spent on demolition costs can be spent on building a better or bigger facility, sites with low demolition costs were preferred. (Also, highly improved properties would obviously command a higher purchase price.)

5) "Identity" and other subjective criteria. Sites on major streets were considered preferable to those with less identifiable addresses.

6) Willing Sellers. The potential use of Eminent Domain can add substantially to the time and cost of the project. The use of Eminent Domain is not a preferred option.

7) Minimizing Relocation Benefit Costs. Property users will be entitled to benefits under the State's Uniform Acquisition & Relocation Act of 1984. Property tenants will likely be compensated for the following:

- Moving costs
- Relocation search costs
- Loss or relocation of tangible personal property
- Reestablishment costs which might include rent differential, tenant improvements, disconnecting utilities fixtures , and equipment.
- Business goodwill

Using the above criteria, the best 8 to 10 potential sites were identified.

At a public meeting held in the neighborhood on March 28, 2001, Real Estate and Library staff solicited community input regarding these 8-10 sites.

On August 7, 2001, site options were also presented to the Library Commission and the Commission received additional public input.

From community and Commission input, 3 sites were identified as preferred.

Real Estate, then, began to research the many aspects of property acquisition (including but not limited to contacting owners about a purchase price) for each of these sites.

A community meeting was held on April 4, 2002 at the existing Ingleside Branch Library to review the site recommendations. On April 18, 2002, City staff recommended and the Library Commission unanimously voted to begin negotiating with the owner of 1298 Ocean Avenue.

The subject Ingleside purchase and sale agreement was negotiated with the owner and presented to the Library Commission on December 19, 2002. After additional public comment, the Library Commission unanimously voted to recommend to the Board of Supervisors, the purchase of the proposed 1298 Ocean Avenue site.

City and County of San Francisco

Real Estate Division
Administrative Services Department

May 14, 2003

To: Alan Gibson
Budget Analyst

From Charlie Dunn
Real Estate Division

Re: Determination of Fair Market Value
Ingleside Branch Library Acquisition

Per your request, the following is information on the methods used to determine Fair Market Value for the Ingleside Branch Library Acquisition

Fair Market Value is generally defined as the price a willing and fully informed Buyer will pay a willing and informed Seller for a property.

The property's value is also based on its highest and best use. In the case of the subject property, the highest and best use is residential over commercial development.

Under the current zoning, the property would support 14 units over ground floor commercial. According to Ken Rich, project manager at the Planning Department, the subject property is located in the proposed Balboa Park Station Area Plan. The pending rezoning of this area would allow for the construction of 19 units over ground floor commercial.

Like the stock market anticipating greater earnings from a company and pushing the stock price upward, the real estate market also typically anticipates and accounts for property changes (such as rezoning or the construction of a new area amenity like a BART station, etc.). An informed buyer and seller would adjust for the new rezoning.

Unfortunately, there were no directly comparable property sales on Ocean Ave. to use to estimate the specific value the market would place on the pending rezoning. Thus, it was necessary for David Tattersol & Asso, the City's third party MAI appraiser, to provide high/low values based on the property's current and pending zoning.

Based on sales of other San Francisco development property, the appraisal established a value of $2,147,000 for the pending rezoning and $1,680,000 for the current zoning.

The proposed purchase price of $1,850,000 represents a 10 % premium to the value under the existing zoning and a 14 % discount to the value under the pending zoning.

The Real Estate Division believes that the proposed purchase price represents the property's fair market value, considering all factors including but not limited to the pending rezoning.

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FAX: (415) 552-9216

Office of the Director of Property
25 Van Ness Avenue, Suite 400

San Francisco, 94102

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Property Type:	Auto service garage.	
Property Address:	1298 Ocean Avenue San Francisco, California	
APN:	3199-017	
Site Area:	11,120 square feet (Metroscan).	
Zoning:	NC-2; Neighborhood Commercial.	
Flood Zone:	Non-participating community.	
Earthquake Hazard:	Not identified in any specific earthquake zone	
Building Improvements:	Single story, metal frame auto service garage.	
Building Area:	1,439 square feet (enclosed) 900 square feet (canopies)	
Occupancy:	100% - owner occupied.	
Functional Utility:	Poor for current level of utilization.	
Highest and Best Use:	Redevelop site with a mixed use residential over retail development.	
Type of Report:	Complete appraisal, self-contained report.	
Interest Appraised:	Fee Simple Interest	
Date of Inspection:	October 24, 2002	
Effective Date of Value:	October 24, 2002	
Effective Date of Report:	December 2, 2002	
	<u>Current Zoning</u>	Balboa Park Station Area Plan <u>Potential Zoning</u>
Sales Comparison Approach:	$1,680,000	$2,147,000
RANGE OF VALUE CONCLUSION:	$1,680,000	$2,147,000

Item 12 - File 03-0577

Department: Department of Human Resources (DHR)

Item: Ordinance approving rules for administration, interpretation and regulation of Parental Leave as submitted by the Department of Human Resources.

Description: In November of 2002, the San Francisco electorate approved a Charter Amendment, Proposition I, Parental Leave. Proposition I added Section A8.365 to the Charter which provides for:

- Supplemental compensation, to make up the difference between a) what the employee receives in State benefits (such as State Disability Insurance which pays 55 percent of full salary for an employee temporarily disabled by pregnancy) and b) what the employee would have received in regular full salary if the employee were not on Parental Leave. The difference would be paid to the employee for up to, but no more than 16 weeks for eligible City employees on parental leave for temporary pregnancy disability or the birth, adoption or placement of a foster care child with an employee's family. Before an employee would be eligible for Parental Leave, such employee would be required to have depleted all of their other accrued leave, such as sick pay and vacation pay.
- Eligibility guidelines and limitations for supplemental compensation during parental leave.
- A requirement that employees participating in the Parental Leave Program sign a DHR form agreeing that such supplemental compensation be considered a loan if the participating employee does not work for the City for at least six months after returning from parental leave. The loan would be payable back to the City with interest, at an interest rate equal to the Treasurer's interest earnings from investment of Pooled City Funds, in equal monthly installments not to exceed five years, commencing 30 days after an employee's separation from City employment.

Parental leave benefits apply to: (1) permanent, provisional and exempt employees whose normal work

week is not less than 20 hours upon completion of six months of continuous service with the City; and, (2) all other City employees, including as-needed employees, who have worked 1,040 hours in the 12 months prior to the beginning of the approved parental leave and whose average work week is not less than 20 hours.

Currently, under Federal and State law and the City's Civil Service rules, the City provides unpaid leave for eligible City employees who are (a) temporarily disabled by pregnancy[1], or who (b) take time off following the birth, adoption or placement of a foster care child with an employee's family to care for the child.

Under Charter Section A8.365-7, the Department of Human Resources is required to develop the procedures necessary to administer, interpret, and regulate the provisions of Proposition I. The policies and procedures must be amended, approved, or rejected by ordinance by the Board of Supervisors, which is the subject of this proposed ordinance.

Comments:

1. Pursuant to Charter Section A8.365-7, the Department of Human Resources (DHR) has developed Paid Parental Leave Policies and Procedures to administer, interpret, and regulate Proposition I, as shown in (Attachment I) to this report, provided by Ms. Gina Roccanova of the City Attorney's Office.

2. The Paid Parental Leave Policies and Procedures reiterate paid parental leave benefits, including continuation of salary, health benefits and retirement contributions, as set forth in Proposition I. Further, the Paid Parental Leave Policies and Procedures clarify certain administrative functions and benefits as follows:
    a) Vacation and sick leave will continue to accrue during paid parental leave.
    b) Paid parental leave will not constitute a break in service for purposes of seniority.
    c) Statutory holidays will not be counted as time used for paid parental leave.

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[1] Temporary pregnancy disability is defined as an employee's inability to work, as certified by a healthcare professional, for reasons related to pregnancy, child birth or related conditions.

d) Paid parental leave will not be considered in determining whether an employee has used sick leave excessively.

3. The Paid Parental Leave Policies and Procedures establish guidelines for City employees to request paid parental leave from their respective departments and describes the required forms to be submitted. Paid parental leave must be requested at least 30 days in advance except in the case of emergency. Required forms include: a) a request for leave form, b) an agreement which provides for repayment of benefits in case of voluntary separation from the City by the employee, and c) a certification from a health care provider for temporary pregnancy disability. Individual departments are responsible for processing these forms and maintaining parental leave records.

4. Based on the Controller's memorandum of August 8, 2002 (Attachment II), the Controller advised the voters in the November, 2002 Voter Information Pamphlet that the annual cost for parental leave benefits would be $6.3 million, including (a) $2.5 million to pay employees for parental leave as previously described, that heretofore had been taken on unpaid leave, and (b) $3.8 million paid for overtime and temporary replacements to backfill for those employees on Parental Leave who work in 24-hour operations, including police officers, firefighters, sheriffs and nurses. According to Ms. Pamela Levin, of the Controller's Office, of the estimated $6.3 million total annual cost, approximately $4.7 million would be a General Fund cost. Ms. Peg Stevenson of the Controller's Office states that the Controller's Office has not updated the estimated cost of the Parental Leave Program since the Controller's cost estimate was made in August of 2002.

5. According to Mr. Ben Rosenfield, individual departments will be requested to absorb any additional salary and fringe benefit costs resulting from Parental Leave from within their approved FY 2003-2004 budgets.

Recommendation: Approve the proposed resolution.

PAID PARENTAL LEAVE POLICY AND PROCEDURES

On November 5, 2002, the voters approved an amendment to the City Charter providing for paid parental leave for City employees. This amendment provides compensation to supplement state disability insurance payments, paid sick leave, vacation, compensatory time and other forms of paid leave to ensure that an employee will receive the equivalent of the employee's salary for up to twelve weeks while on an qualifying approved leave following the birth, adoption, or placement of a child with the employee's family for foster care. It provides for an additional four weeks of benefits for employees who take leave for temporary pregnancy disability. The amendment will go into effect on July 1, 2003.

This document provides information about the Paid Parental Leave amendment and sets forth the policies and procedures for its implementation.

I. PAID PARENTAL LEAVE COVERAGE AND BENEFITS

A. Existing Law

Under federal and state laws, employees are entitled to take an **unpaid** leave of absence for up to twelve weeks to care for a child after birth or placement for adoption or foster care. Beginning in January 2004, a new state program will provide employees with benefits similar to those paid under the existing State Disability Insurance (SDI) program during such leaves.

State law permits up to four months of additional leave in the event of pregnancy disability, if the need for the leave is medically certified. This leave is also **unpaid**, but in most cases employees will be eligible for benefits under the State's SDI program. Under the City's Civil Service Rules, employees who meet certain criteria may take up to a year of unpaid leave for the above reasons, but the granting of this leave is discretionary.

B. Benefit Added By Parental Leave Amendment

For employees who meet the eligibility criteria, the Paid Parental Leave amendment will supplement the employees' accrued paid leave and any state benefits (under SDI or the state parental leave program), so that the employee will receive the equivalent of his or her full salary, for up to twelve weeks (or sixteen if the employee is disabled by pregnancy, childbirth, or a related condition) while on approved parental leave.

C. Eligibility

The Paid Parental Leave provisions apply to:

- Permanent, provisional and exempt employees who (a) normally work at least twenty hours per week **and** (b) have completed six months of continuous service;
- Any other City employee (a) who has worked at least 1,040 hours in the twelve months prior to the leave **and** (b) whose average work week is at least twenty hours.

Continuous service is calculated from the date the employee was first appointed to City employment.

D. Types of Parental Leave Covered

1. Family Medical Leave

Paid Parental Leave in this category will be provided for up to twelve weeks in any twelve month period for employees who take leave pursuant to the Family and Medical Leave Act (FMLA), the California Family Rights Act, or the Civil Service Commission Rules, for one of the following reasons:

a. Birth of a child to the employee, the employee's spouse, or the employee's domestic partner;

b. Placement of a child with the employee's family for adoption or foster care

For the purpose of these provisions, "domestic partner" has the same meaning as set forth in Administrative Code section 62.1.

2. Temporary Pregnancy Disability Leave

An additional four weeks of paid leave are available for employees who are unable to work due to pregnancy, childbirth, or related conditions. The need for Temporary Pregnancy Disability Leave must be certified by a health care provider. Temporary Disability Leave benefits are available only to the temporarily disabled employee herself, and not to spouses or domestic partners.

E. Benefits

1. Salary

The amendment supplements accrued paid leave and state benefits to provide up to twelve weeks of the employee's full regular base wage (sixteen for temporary pregnancy disability).

For the purposes of this amendment, "regular base wage" shall mean the hourly rate of pay multiplied by the employee's standard hours, not including premiums or regularly scheduled overtime.

a. Exhaustion of Accrued Paid Leave Is Required
Employees on approved Parental Leave must first exhaust all accrued paid leave (*e.g.* sick leave, vacation, compensatory time, administrative or executive leave, floating holidays) before receiving any supplemental compensation. If an employee chooses not to exhaust these leaves, the total amount of the benefit for which the employee would otherwise have been eligible will be reduced by the amount of paid leave accrued by the employee as of the start of the leave.

b. Parental Leave Benefit Supplements Other Types of Benefits
The amount of the supplemental compensation shall be reduced by any payments in lieu of compensation received by the employee from a federal, state or other local government agency while on Parental Leave (*e.g.* SDI, certain types of workers' compensation benefits).

An employee shall not receive supplemental compensation which would result in an employee receiving total compensation while on Parental Leave which is greater than the employee's regular base wage.

c. Duration of Benefits
Supplemental compensation shall be provided for no more than twelve weeks for employees on approved Family Medical Leave or sixteen weeks for employees on Temporary Pregnancy Disability Leave. Employees eligible for both Family Medical Leave and Temporary Pregnancy Disability Leave, the supplemental compensation shall be provided for no more than sixteen weeks.

d. Use of Accrued Paid Time in Previous Year
The twelve or sixteen week period shall be reduced by any paid leave taken after the birth of a child to the employee, the employee's spouse, or the employee's domestic partner, placement of a child with the employee's family for adoption of foster care, or temporary pregnancy disability within twelve months prior to the commencement of Parental Leave.

2. Health benefits
The City will continue to make contributions on behalf of an employee previously enrolled in a health plan with the City and County Health Service System during the period of Paid Parental Leave. The employee

and his/her dependents will continue to be covered as long as the employee pays for any required employee contribution. Such contribution is usually a payroll deduction.

3. Retirement

Retirement contributions and service credit will accrue on a **pro rata** basis. That is, contributions required by the Charter and/or the applicable Memorandum of Understanding will be based on the amount of paid leave and supplemental salary the City actually pays during the period of Paid Parental Leave. Service credit will also accrue on a pro rata basis. An employee who has questions regarding retirement contributions or benefits is encouraged to contact the Retirement System Office at 30 Van Ness Avenue, Suite 3000, (415) 487-7030, Monday-Friday, 8:00 a.m. – 5:00 p.m.

4. Accrual of Vacation and Sick Leave

Vacation and sick leave will continue to accrue during the period of Paid Parental Leave.

5. Seniority

Paid Parental Leave shall not constitute a break in service for purposes of seniority. However, probationary periods may be extended based on criteria set forth in Civil Service Rules, City or departmental policies, and/or applicable Memoranda of Understanding.

6. Statutory Holidays

When an employee is not scheduled to work on a legal holiday that falls during an approved Paid Parental Leave, that holiday is not counted as time used towards the total entitlement.

7. Application of Attendance Policy

Any leave taken by an employee which qualifies as Paid Parental Leave will not be counted in determining whether an employee has excessively used sick leave under that employee's department's attendance policy.

II. PROCEDURE FOR REQUESTING PAID PARENTAL LEAVE

A. Giving Notice to the City

In all but a small minority of cases, employees will have advance notice of their need for parental leave. Existing City policy requires that except in the case of emergencies, such leave must be requested in advance, with the employee giving at least thirty days' notice. In the rare case when the need for leave is not

foreseeable, employees must notify the Appointing Officer as soon as is practicable.

B. Required Forms

1. **Employee Request for Family and Medical Leave Form**
All employees wishing to receive Paid Parental Leave must complete an Employee Request for Family and Medical Leave Form (DHR FMLA 1A). Refer to section I D.1 Family Medical Leave for leave details.

2. **Temporary Pregnancy Disability Leave**
All employees wishing to receive Paid Parental Leave as a result of a temporary disability due to pregnancy must complete a Request for l Leave Form identifying Temporary Pregnancy Disability Leave. (DHR 7-20). Refer to section I D.2 Temporary Pregnancy Disability Leave for leave details.

3. **Acknowledgement Form**

If an employee voluntarily separates from City employment within six months of returning to work after a Paid Parental Leave, the amount of supplemental compensation received will be treated as a loan. All employees who receive compensation under the amendment must execute an agreement providing for repayment in the case of such voluntary separation. The loan shall be payable with interest at a rate equal to the greater of a) the rate received for the concurrent period by the Treasurer's Pooled Cash Account or, b) the minimum amount necessary to avoid imputed income under the Internal Revenue Code of 1986, as amended from time to time, and any successor statute. Unless an alternative repayment schedule is agreed to by the City and the employee, the loan shall be payable in equal monthly installments over a period not to exceed five (5) years commencing thirty (30) days following the employee's separation from City employment.

4. **Certification of Health Care Provider**
Employees who need to take pregnancy disability leave are eligible for an additional four weeks of paid parental leave (up to a total of sixteen weeks). In order to be eligible for temporary pregnancy disability leave and the attendant paid benefit, an employee must provide certification from her health care provider that she is temporarily unable to work due to her pregnancy, childbirth, or a related condition.

A health care provider is defined as a doctor of medicine authorized by the State of California to practice medicine or surgery (as appropriate).

Employees who are not seeking additional leave for temporary pregnancy disability do not need to submit a Health Care Provider Form.

III. CONTACTS

For more information, contact your DHR Internal Services Staff Analyst.
Department of Human Resources
44 Gough Street, San Francisco, California 94103

Attachment II

CITY AND COUNTY OF SAN FRANCISCO OFFICE OF THE CONTROLLER

Edward Harrington
Controller

August 8, 2002

Mr. John Arntz, Acting Director of Elections
Department of Elections
City Hall, Room 48
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Proposition I
Charter Amendment to provide City employees with paid parental

Dear Mr. Arntz:

Should the proposed charter amendment be approved by the voters, in my opinion, there would be an increase in the cost of government of approximately $6.3 million annually. There are two major parts to this cost.

We estimate a cost of $2.5 million for paying employees for parental leave that is currently taken as unpaid leave. This figure depends on the number of employees who would apply for parental leave and whether they are eligible for State Disability Insurance (SDI). SDI pays an average of 55 percent of full salary to an employee temporarily disabled by pregnancy, so the City would only need to cover 45% of their expense. Employees who do not have SDI coverage or who become parents without being pregnant themselves would not receive SDI payments, and would be compensated at 100% City expense.

Secondly we estimate a cost of $3.8 million to pay overtime or hire temporary replacements for employees taking parental leave who work in 24-hour operations, including police officers, firefighters, sheriffs and nurses. It does not include the cost of replacing employees who are not in 24-hour operations, because the decreased productivity that may result from their absence are not cash costs. The cost of this amendment would increase if City departments chose to pay overtime, premium or temporary wages to workers who take on the job duties of such employees on parental leave.

Finally, the amendment requires employees to refund parental leave pay if they voluntarily leave City employment without returning to work for at least six months. Our costs assume at least 5% of people taking this benefit would be required to refund parental leave pay to the City under this provision. The cost of this amendment would increase if fewer employees left City employment following parental leave.

Sincerely,

Edward M. Harrington
Controller

City Hall • 1 Dr. Carlton B. Goodlett Place • Room 316 • San Francisco CA 94102-4694 FAX 415-554-

Item 14 - File 03-0342

Department: Airport

Item: Resolution authorizing the Airport Commission to accept and expend grant funds in a total amount of $26,759,043 from the Federal Aviation Administration Airport Improvement Program, and any subsequent amendments offered by the Federal Aviation Administration (see Comment No. 3), for six Airport development projects (AIP 23[1]) and one Airport security project (AIP 24[2]).

Source of Funds: Federal Aviation Administration (FAA) Airport Improvement Program (AIP)

Grant Amount: $26,759,043

Grant Period: September 25, 2002 to September 25, 2006 (four years) for FAA AIP grant funds in the amount of $24,259,043 and September 27, 2002 to September 27 2006 (four years) for FAA AIP grant funds in the amount of $2,500,000. According to Ms. Josephine Bower of the Airport, the Airport has not accepted or expended any of the subject grants funds to date.

Required Match: $8,086,348 from monies previously appropriated by the Board of Supervisors from the Airport's Capital Improvement Fund.

Indirect Costs: According to Ms. Josephine Bower of the Airport, indirect costs have been waived in order to maximize the use of the grant funds for direct project costs.

Description: The proposed resolution would authorize the Airport to accept and expend FAA grant funds in the amount of $26,759,043 for six Airport development projects ($24,259,043), known as AIP 23, and one Airport security project ($2,500,000), known as AIP 24, which are described in Attachment I, provided by the Airport.

The six Airport development projects together with total project costs are as follows:

[1] AIP 23 is the grant in the amount of $24,259,043 for six Airport development projects.
[2] AIP 24 is the grant in the amount of $2,500,000 for one Airport security improvement project.

(a) Replacement of one Aircraft Fire Fighting/Rescue vehicle with a minimum capacity of 4,500 usable gallons of water at a total cost of $1,000,000.
(b) Replacement of one existing triple combination pumper, for fire fighting, at a total cost of $400,000.
(c) Retrofit the International Terminal infrastructure to accommodate the Explosive Detection System (EDS)[3] at a total cost of $19,606,217.
(d) Study and design of airfield seismic stabilization and realignment project, phase I, at a total cost of $4,413,340.
(e) Power distribution system loop connection, phase I, at a total cost of $3,373,084.
(f) Airport shoreline protection restoration, phase II, at a total cost of $3,552,750.

Total estimated project costs for the six above-listed Airport development projects are $32,345,391, of which the subject grant funds will pay for $24,259,043, or approximately 75 percent, and the balance of $8,086,348, or approximately 25 percent, will be funded from monies previously appropriated by the Board of Supervisors from the Airport's Capital Improvement Project Fund.

In addition to the six Airport development projects listed above, the proposed grant would fund one Airport security improvement project. The Airport security improvement project, described in Attachment I, is the replacement and reconfiguration of the International Terminal baggage conveyor systems, at a total cost of $2,500,000, which will be funded 100 percent by the proposed grant funds. According to Ms. Bower, the replacement of the International Terminal baggage conveyor systems is required by the Aviation Transportation Security Act.

Budget: Attachment II, provided by the Airport, contains (a) the budget for each of the seven projects, which have a total estimated cost of $34,845,391, (b) the amounts of matching funds for each of the seven projects, and (c) lists the process by which contracts will be awarded.

Comments: 1. According to Ms. Bower, all seven projects will be completed through outside contracts selected through (a)

[3] The International Terminal retrofit for the EDS is in AIP 23 and is considered an Airport development project although it is security-related.

competitive bid, (b) Request for Proposal or (c) sole source processes. The one sole source contract with D. W. Nicholson will be for $2,500,000 for the replacement and reconfiguration of the International Terminal baggage conveyor systems. Attachment III, provided by the Airport is a letter from the Airport to the FAA explaining why D. W. Nicholson, the installer of the original structural platforms and the Baggage Handling System, was selected on a sole source basis.

2. As noted in Attachment I, the Airport has budgeted $675,000 for administrative expenses, $625,000 to be paid by FAA AIP grant funds and $50,000 to be paid from existing Airport Capital Improvement Project Fund monies. Attachment IV, provided by Ms. Bower, contains a list of the proposed administrative expenditures. Ms. Bower advises that the total administrative costs of $675,000 were estimated based on 2 percent of the total cost of the six Airport development projects (2 percent of total AIP 23 project costs of $32,345,391 is $646,908) and 1 percent of the one Airport security improvement project (1 percent of AIP 24 project costs of $2,500,000 is $25,000), for total estimated administrative costs of $671,908 rounded to $675,000. Ms. Bower states that all of the administrative tasks included in the budgeted administrative costs of $675,000 will be performed by Airport personnel and not by outside consultants.

3. The proposed resolution provides for the authorization of the Airport Commission to enter into "any subsequent amendments," to the grant agreement authorized by the FAA. Attachment V, provided by Ms. Bower, states that, "FAA Airport District Office is authorized to amend AIP grant agreements in relation to changes in work description. This may involve adding, substituting, and/or deleting work items. New development items added to an existing grant should be closely related to the approved projects. Estimated cost of the proposed items should be within the grant amount, and all amendments must be fully justified and documented."

4. Attachment VI is the Grant Information Form that includes a disability access checklist.

Recommendation: Approve the proposed resolution.

PROJECTS DESCRIPTION AND JUSTIFICATION:

A.I.P. NO. 23

1. **Project Title:** **ARFF Crash and Rescue Vehicle – TI-4500 Striker**

   Description: An improved Aircraft Fire Fighting / Rescue vehicle, which holds an increased capacity of 4,500 usable gallons of water, with accessories that are updated for better performance.

   Justification: This purchase will replace the existing vehicle, which was purchased in 1981, and is scheduled for replacement under the SFO Fire Department Apparatus Scheduled Replacement Program. The FAA Certification/Safety Inspector has also recommended such replacement as a result of the Annual Close-out Inspection in both 2001 and 2002. it is standard FAA procedure for airports to begin the process of replacing ARFF equipment once it reaches the age of 10 years.

2. **Project Title:** **Pierce Triple Combination Pumper**

   Description: This equipment consist of a water pumper that can hold a capacity of 1,000 gallons of water, a pump that can dispense1,500 gallons per minute, and a foam eductor with a deluge nozzle, which are essential components to any effective fire fighting vehicles.

   Justification: This improvement is required as part of the SFO Fire Department Apparatus Scheduled Replacement Program. This vehicle will replace the existing Mobile 48 triple combination pumper, which was purchased in 1990 and is also recommended by the FAA Certification/Safety Inspector to replace during the 2001 and 2002 Annual Close-Out I Inspection .

3. **Project Title:** **100% EDS Infrastructure Retrofit**

   Description: To replace baggage operation systems and reconfigure the International Terminal infrastructure as necessary to install and to maintain FAA certified-EDS CTX-9000 machines in order to bring the existing International Terminal's hybrid Checked Baggage Inspection System (CBIS) into 100% EDS compliance.

   Justification: To facilitate compliance with Aviation Transportation Security Act (ATSA) requirements, and to meet the FAA mandate for screening of all baggage with EDS machines.

4. **Project Title:** **Airfield Seismic Stabilization and Realignment, Phase I**

   Description: Study of underlying soil base of the existing airfield, from the pavement surface to approximately 50 – 60 feet deep, focusing on the characters and performance of the existing soil base in a high level seismic event, followed by engineering and design of methods and measures to strengthen the soil base to withstand a pre-determined level of seismic activity. Installation and construction of such measures will also be implemented to prevent liquefaction and other seismic consequences.

Source: Airport

Justification: To maximize the safety of the traveling public, and to minimize the level of destruction as a result of seismic activities. Also, to ensure that the airport will continue to operate and to execute the essential services effectively and efficiently, after a high level seismic event.

5. **Project Title: Power Distribution System Loop Connection, Phase I**

Description: Design and construction necessary to upgrade the Airport's electrical power distribution system, which feeds the airfield lighting, buildings and various other airfield and north field electrical loads. The work will include the construction of infrastructure and the upgrade of power distribution cabling.

Justification: It will increase the reliability of the power distribution system and allow for load growth.

6. **Project Title: Airport Shoreline Protection Restoration – Phase II**

Description: Reconstruction of over 10,000 feet of dikes along the perimeter of the airfield at various segments to control flooding and erosion.

Justification: To protect over 35,000 linear feet of dikes and levees from erosion and destruction caused by storm waves and tidal inundation.

A.I.P. NO. 24

1. **Project Title: Replacement and Reconfiguration of Terminal Baggage System and Areas**

Description: Replacement and reconfiguration of the existing International Terminal baggage conveyor systems, including the placements determination and installation of the required Explosive Detection machines.

Justification: Continuation effort to fulfill the requirements under the Transportation Security Act (TSA) mandate in regards to the implementation of a full-functional Explosive Detection System, beginning with the International Terminal, then proceed to the Domestic Terminal areas.

Source: Airport

ATTACHMENT II

AIRPORT DEVELOPMENT PROJECTS (AIP 23)	Federal Grant Funds	Airport Matching Funds	Total Project	Competitive Bid Process	Request for Proposal	Sole Source	Tentative Start Date	Tentative Completion Date
ARFF Crash and Rescue Vehicles:								
rConstruction	$0	$0	$0					
Administration	$0	$0	$0					
Architectural Engineering Basic Fees	$0	$0	$0					
Project Inspection Fees	$0	$0	$0					
Equipment	$750,000	$250,000	$1,000,000		X		Sep-03	Sep-04
Subtotal	$750,000	$250,000	$1,000,000					
Pierece Triple Combination Pumper:								
Construction	$0	$0	$0					
Administration	$0	$0	$0					
Architectural Engineering Basic Fees	$0	$0	$0					
Project Inspection Fees	$0	$0	$0					
Equipment	$300,000	$100,000	$400,000		X		Sep-03	Sep-04
Subtotal	$300,000	$100,000	$400,000					
100% EDS Infrastructure Retrofit:								
Construction	$13,629,555	$4,543,185	$18,172,740	X			On-Going	Jun-06
Administration	$250,833	$35,000	$285,833					
Architectural Engineering Basic Fees	$558,315	$204,231	$762,546					
Project Inspection Fees	$274,293	$110,805	$385,098					
Equipment	$0	$0	$0					
Subtotal	$14,712,996	$4,893,221	$19,606,217					

AIRPORT DEVELOPMENT PROJECTS (AIP 23 Continued)	Federal Grant Funds	Airport Matching Funds	Total Project	Competitive Bid Process	Request for Proposal	Sole Source	Tentative Start Date	Tentative Completion Date
Airfield Seismic Stabilization & Realignment, Phase I:								
Construction	$2,550,000	$850,000	$3,400,000	X			Summer 2004	Spring 2006
Administration	$135,833	$5,000	$140,833					
Architectural Engineering Basic Fees	$73,828	$42,735	$116,563					
Project Inspection Fees	$289,927	$116,017	$405,944					
Equipment	$0	$0	$0					
Geotechnical Consultant	$262,500	$87,500	$350,000		X		Fall 2003	Summer 2004
Subtotal	$3,312,088	$1,101,252	$4,413,340					
Power Distribution System Loop Connection, Phase I:								
Construction	$2,156,250	$718,750	$2,875,000	X			Nov-03	May-06
Administration	$107,500	$5,000	$112,500					
Architectural Engineering Basic Fees	$18,549	$15,309	$33,858					
Project Inspection Fees	$249,264	$102,463	$351,727					
Equipment	$0	$0	$0					
Subtotal	$2,531,563	$841,521	$3,373,084					
Airport Shoreline Protection Restoration, Phase II:								
Construction	$2,062,500	$687,500	$2,750,000	X			Aug-04	Dec-04
Administration	$105,834	$5,000	$110,834					
Architectural Engineering Basic Fees	$342,911	$141,427	$484,338					
Project Inspection Fees	$141,152	$66,426	$207,578					
Equipment	$0	$0	$0					
Subtotal	$2,652,397	$900,353	$3,552,750					

AIRPORT SECURITY PROJECTS (AIP 24)	Federal Grant Funds	Airport Matching Funds	Total Project	Competitive Bid Process	Request for Proposal	Sole Source	Tentative Start Date	Tentative Completion Date
Replacement & Reconfig. Of Terminal Baggage System & Areas:								
Construction	$2,125,000	$0	$2,125,000			X	On-Going	Jun-06
Administration	$25,000	$0	$25,000					
Architectural Engineering Basic Fees	$200,000	$0	$200,000					
Project Inspection Fees	$150,000	$0	$150,000					
Subtotal	$2,500,000	$0	$2,500,000					
TOTAL COST BREAKDOWN								
TOTAL COST BREAKDOWNS FOR AIP 23	***Federal Fund***	***Matching Fund***	***Total Cost***					
Construction	$20,398,305	$6,799,435	$27,197,740					
Administration	$600,000	$50,000	$650,000					
Architectural Engineering Basic Fees	$993,603	$403,702	$1,397,305					
Project Inspection Fees	$954,635	$395,711	$1,350,346					
Equipment	$1,050,000	$350,000	$1,400,000					
Geotechnical Consultant	$262,500	$87,500	$350,000					
TOTAL	**$24,259,043**	**$8,086,348**	**$32,345,391**					
TOTAL COST BREAKDOWNS FOR AIP 24	***Federal Fund***	***Matching Fund***	***Total Cost***					
Construction	$2,125,000	$0	$2,125,000					
Administration	$25,000	$0	$25,000					
Architectural Engineering Basic Fees	$200,000	$0	$200,000					
Project Inspection Fees	$150,000	$0	$150,000					
Equipment	$0	$0	$0					
TOTAL	**$2,500,000**	**$0**	**$2,500,000**					
TOTAL PROJECT COST (AIP 23 & 24)	**$26,759,043**	**$8,086,348**	**$34,845,391**					

Attachment III
Page 1 of 2

San Francisco International Airport

March 15, 2002

Mr. Howard Yoshioka, P.E.
Acting District Manager
Federal Aviation Administration
831 Mitten Road, Suite 210
Burlingame, CA 94010-1300

RE: Implementation of Aviation Security Transportation Act

Dear Mr. Yoshioka:

According to the Aviation Security Transportation Act (S.1447), 100% EDS Baggage Inspection must be implemented by December 31, 2002. To meet the requirements of that Act, SFO will need to replace all current "Z-Scan machines" with 11 additional "CTX 9000" machines.

As you know, the San Francisco International Airport Master Plan was completed in December 2000. As part of the Master Plan, a Common Use Baggage Handling System for the new International Terminal was customarily designed and includes four (4) in-line "CTX 9000" machines.

I am sure you agree that it is not advantageous for either the FAA or the Airport, from either a monetary or scheduling aspect, to replace the entire Baggage Handling System. D.W. Nicholson was the installer of the original structural platforms and the Baggage Handling System, which maintained a well-established relationship with the original project personnel, plus design, engineering and installation companies, who will be sub-contracted by D.W. Nicholson. With the continuation of knowledge and direct services from D. W. Nicholson, our goal to comply with the newly-imposed regulation will be accomplished in a most beneficial manner.

Referencing the Airport Improvement Program (AIP) Handbook (Order 5100.38A), Chapter 8 (Procurement and Contract Requirements), Section 1-802c.(4), states:

> "If a sponsor knowingly writes a specification that is noncompetitive (and, therefore, knows the specification is actually sole source), it must state up front to the FAA that the specification is, in fact, sole source and then justify this procurement method."

Any specification to modify the system will be performed in whole or in part by D. W. Nicholson. We are therefore stating to you that any modifying specification will be, in reality, a sole source. Since the modification would be a sole source, we are asking that the work be done non-competitively as authorized under Chapter 8, Section 1, E02C1 Order 5100.38A.

> "C. Noncompetitive Proposal.
>
> (1) Although it is preferred that all procurements be made on a competitive basis, noncompetitive proposal is permitted under the following circumstances:

Mr. Howard Yoshioka, P.E.
Acting District Manager
Federal Aviation Administration
March 15, 2002
Page 2

(b) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation."

The very definition of exigency is a situation that requires urgent or pressing attention in order to complete the task. therefore, your authorization to contract D.W. Nicholson for this project is imperative because there is no greater urgency than to increase the safety and security of our passengers.

An estimated project cost of $17 million, exemplifies a substantial cost saving, below what would be required if we were to re-design and replace the entire infrastructure of the existing system. Attached is a summary of the proposed work scope and designated contractors. We believe you are fully authorized to allow us to proceed with this proposal. Working together, we can show the country and the world a model EDS system and take a large step in safeguarding the passengers we have been entrusted to protect. Your full support in this matter is truly appreciated.

Very truly yours,

AIRPORT COMMISSION
City and County of San Francisco

Ernie Eavis
Deputy Airport Director

Attachment

EE:JL

bcc: John Martin
John Costas
Jackson Wong
Ernie Eavis
Duke Briscoe
Ron Driscoll
Kevin Kone
Josephine Lau

ATTACHMENT V

TOTAL ADMINISTRATION COST BREAKDOWN:

ADMINISTRATION COST BREAKDOWN:		
	$650,000	AIP 23
	$25,000	AIP 24
	$675,000	**TOTAL**
Contract Advertising / Award / Certification	$5,000	
Contract Payment / Invoice Processing	$300,000	
Prevailing Wage Monitoring	$200,000	
Insurance Certification	$5,000	
Project Management (Reports, Correspond., etc.)	$100,000	
FAA Funding Reimbursement	$25,000	
FAA Transaction / Quarterly Status Report	$20,000	
FAA / Contract Modification and Closeout	$20,000	
TOTAL	**$675,000**	

Source: Airport

SUBSEQUENT AMENDMENTS OFFERED BY FAA:

FAA Airport District Office is authorized to amend AIP grant agreements in relation to changes in work description. This may involve adding, substituting, and/or deleting work items. New development items added to an existing grant should be closely related to the approved projects. Estimated cost of the proposed items should be within the grant amount, and all amendments must be fully justified and documented.

File Number: ____________________

Grant Information Form

(Effective January 2000)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grants referred to in the accompanying resolutions:

1. Grant Title: Accept and Expend Grant Funds under the Airport Improvement Program (AIP), AIP Project No. 3-06-0221-23 and AIP Project No. 3-06-0221-24

2. Department: Airport Commission

3. Contact Person: Cathy Widener Telephone: (650) 821-5023

4. Grant Approval Status (check one):

   [X] Approved by funding agency [ ] Not yet approved

5. Amount of Grant Funding Approved or Applied for: $26,759,043.00

6a. Matching Funds Required: $8,086,347.67
 b. Source(s) of matching funds (if applicable): AIP Project No. 3-06-0221-23, $8,086,347.67 in Capital Improvement Project Funds; AIP Project No. 3-06-0221-24 is 100% reimbursable of all allowable project costs.

7a. Grant Source Agency: Federal Aviation Administration
 b. Grant Pass-Through Agency (if applicable): N/A

8. Proposed Grant Project Summary:
   Please Refer to Narrative Project Description in both Grant Applications (Attachment D)

9. Grant Project Schedule, as allowed in approval documents, or as proposed:

   Start Date: September 25, 2002 End Date: September 25, 2006

10. Number of new positions created and funded: (0 for both AIP Projects)

11. If new positions are created, explain the disposition of employees once the grant ends? N/A

12a. Amount budgeted for contractual services: $27,547,740 for AIP No. 23; $2,125,000 for AIP No. 24

b. Will contractual services be put out to bid?
Yes, for AIP No. 23, *if over $50,000*, according to FAA bid and contract procedures. No, for AIP No. 24, which will be performed by the existing construction team, which has been approved by FAA as sole-source, specifically for security enhancements in regards to explosive detection system and devices.

c. If so, will contract services help to further the goals of the department's MBE/WBE requirements?
Contract services will assist in complying department's DBE requirements. MBE/WBE goals do not apply to FAA contracts.

d. Is this likely to be a one-time or ongoing request for contracting out? One-Time

13a. Does the budget include indirect costs? [ ] Yes [X] No

b1. If yes, How much? N/A
b2. How was the amount calculated? N/A

c. If no, why are indirect costs not included?
[ ] Not allowed by granting agency
[ ] To maximize use of grants funds on direct services
[X] Other (please explain):
According to the Lease and Use Agreement between the City of San Francisco and major airlines using San Francisco International Airport, the Annual Service Payment made to the City shall constitute full satisfaction of all obligations of the Airport. (Please refer to Attachment F).

14. Any other significant grant requirements or comments: N/A

**** Disability Access Checklist****

15. This Grant is intended for activities at (check all that apply):

[X] Existing Site(s) [X] Existing Structure(s) [ ] Existing Program(s) or Service(s)

[ ] Rehabilitated Site(s) [ ] Rehabilitated Structures(s) [ ] New Program(s) or Service(s)

[X] New Site(s) [X] New Structure(s)

16. The Departmental ADA Coordinator and/or the Mayor's Office on Disability has reviewed the proposal and concluded that the projects as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities, or will require unreasonable hardship exceptions, as described in the comments section:

Comments:

Departmental or Mayor's Office of Disability
Reviewer:______________________________ (Name)

Date Reviewed: ______________________________

Department Approval:

Ronald J. Fong	**ADA Program Manager**
(Name)	(Title)

____
(Signature)

Item 15 - File 03-0619

Note: This item was continued by the Finance and Audits Committee at its meeting of May 7, 2003.

Department: Airport
Airfield Development Bureau (ADB)

Item: Hearing to consider release of $3,767,000 held in reserve for the Airfield Development Bureau for FY 2002-2003.

Amount: $3,767,000 (see Comment Nos. 2 and 3)

Source of Funds: See Attachment No. I provided by the Airport.

Description: On July 1, 2002, the Board of Supervisors approved Ordinance 159-02 (File No. 02-1068) rescinding $1,087,448,058 of unencumbered and unexpended funds previously appropriated for unspecified Airport Capital Improvement Projects and reappropriated $546,658,755 of the $1,087,448,058 for specific Capital Improvement Projects. Of the total $546,658,755 reappropriation, the Board of Supervisors appropriated $11,235,148 for the FY 2002-2003 Airfield Development Bureau – Runway Reconfiguration Project budget, reserving $5,000,000 of the $11,235,148 and releasing $6,235,148.

The Airport is requesting the release of $3,767,000 of the previously reserved $5,000,000 for the remainder of FY 2002-2003 to continue the Airfield Development Bureau – Runway Reconfiguration Project work pertaining to (a) the Federal Environmental Impact Statement (EIS), and (b) the State of California Environmental Impact Report (EIR) required for the Runway Reconfiguration Project.

Budget: A summary FY 2002-2003 budget for the Airport's Airfield Development Bureau Runway Reconfiguration Project is shown in the following table:

The above table contains the following budget and expenditure information broken down by total personnel and total contract costs:

- Original FY 2002-2003 project appropriation of $11,235,148.
- FY 2002-2003 funding released by the Board of Supervisors in the amount of $6,235,148.
- FY 2002-2003 actual expenditures in the amount of $4,514,883 as of April 3, 2003.
- Projected FY 2002-2003 expenditures in the amount of $9,262,273 as of June 30, 2003.
- Subject requested release of reserved funds in the reduced amount of $3,027,125 which, based on the Budget Analyst's review, is $739,875 less than the Airfield Development Bureau's request to the Finance and Audits Committee of $3,767,000 (see Comment Nos. 2 and 3).
- The amount of $1,972,875 which is the excess of the FY 2002-2003 budgeted funds of $11,235,148 over the projected FY 2002-2003 expenditures of $9,262,273 as of June 30, 2003.

Comments:

<u>FY 2002-2003 Expenditures to Date</u>

1. As shown in the above table, the Airfield Development Bureau had expended $4,514,883 of its FY 2002-2003 budget as of April 3, 2003, or approximately 40.2 percent of the total $11,235,148 project appropriation for FY 2002-2003. Ms. Debra Ward of the Airfield Development Bureau advises that none of the $5,000,000 in previously reserved funds has been expended to date.

2. By June 30, 2003, the Airfield Development Bureau projects total expenditures of $9,262,273, or $1,972,875 less than the total FY 2002-2003 budget of $11,235,148. The Board of Supervisors has previously authorized expenditures of $6,235,148. Therefore, Board of Supervisors authorization is now required for the remaining need of $3,027,125 (total projected expenditures of $9,262,273, less $6,235,148 previously released by the Board of Supervisors). As previously noted, the remaining need of $3,027,125 is $739,875 less

than the Airport's request for the release of reserved funds in the amount of $3,767,000.

3. Therefore, the Budget Analyst recommends that the proposed release of reserved funds be reduced by $739,875, from $3,767,000 to $3,027,125.

URS Corporation Contract

4. The Airfield Development Bureau justified part of its request for release of reserved funds for the URS Corporation, on the basis of hours of additional work required. In response to the Budget Analyst's request for further information, according to Mr. Ivar Satero of the Airport, the actual expenditures shown in the table above of $2,018,010 as of April 3, 2003 represent contractor invoices submitted through January 10, 2003 that were paid as of April 3, 2003, Mr. Satero has submitted documentation that additional unpaid invoices amounting to $1,032,687 have been submitted, but were not paid until April 30, 2003 according to Mr. Satero, and invoices through the remainder of FY 2002-2003 are projected to total an additional $760,000. Therefore, URS Corporation contract expenditures for FY 2002-2003 are projected to total $3,810,697 ($2,018,010 shown in the table above, an additional $1,032,687 through April 30, 2003 and a projected $760,000 from May 1 through June 30, 2003).

Wildlands, Inc. Option Agreement

5. During the Budget Analyst's pending management audit of the Airport's Airfield Development Bureau, the Budget Analyst has raised various questions pertaining to the Airport's option agreement with Wildlands, Inc. Under the terms of the option agreement between the Airport and Wildlands, Inc., the Airport is committed to paying Wildlands, Inc. (a) a monthly option payment of $33,980 one month in advance, and (b) a 60-day termination payment of two monthly payments, or $67,960. In FY 2002-2003 the Airport has already committed to paying Wildlands, Inc. 11 monthly option payments through May 30, 2003 for a total of $373,780 (11 times $33,980). Further, the Airport would have to pay a two-month termination payment of $67,960 even if

the Airport terminated the option agreement at the beginning of May. Therefore, the Airport is already required to make a minimum payment to Wildlands, Inc. of $441,740 ($373,780 plus $67,960) in FY 2002-2003, in addition to paying Wildlands Inc. the full requested release of reserved funds in the amount of $190,655 (see table above).

The Budget Analyst's finding on the Wildlands, Inc. option agreement will be presented in detail in his forthcoming management audit report to be submitted to the Board of Supervisors.

Regional Water Quality Control Board Memorandum of Understanding (MOU)

6. The Airport is currently negotiating a Memorandum Of Understanding with the Regional Water Quality Control Board (RWQCB) for the RWQCB to provide the Airport with the following scope of work at an estimated cost of $125,000:

- Review work plans, investigation reports, mitigation plans, and associated correspondence for the Airport, its consultants, and/or interested parties.
- Participate in meetings (including the Multi-Agency Task Force for the Runway Reconfiguration), make presentations, and hold discussions with interested parties about water quality impacts.
- Review (a) the proposals and technical analyses prepared for the draft EIR/EIS, (b) the draft EIR/EIS supporting documentation, (c) the recommendations presented to the Airfield Development Bureau by the National Oceanic and Atmospheric Agency Panel, (d) the analyses required under Section 404(b)(1) of the Clean Water Act, and (e) the mitigation plan.

Based on the Budget Analyst's inquiries, Ms. Ward advises that, based on approximately 1,560 hours of work, at an average hourly rate of $80.00, the original estimated cost for the RWQCB work was $125,000 (1,560 hours x $80.00 = $124,800). However, since the RWQCB will not commence its work until sometime in May of

2003, the estimated number of hours involved between May 1 and June 30, 2003 should be reduced by 920 hours, from 1,560 hours to 640 hours (640 hours represents two Contractor personnel performing work approximately 160 hours per month or a total of 320 billable hours per month, for two months). This reduction in hours results in a total need of $51,200 (640 hours x $80.00). Therefore, the requested release of reserved funds should be reduced by $73,800, from $125,000 to $51,200.

Attachments

7. Attachment I, a memorandum provided by Mr. Leo Fermin of the Airport, describes the source of funds for the proposed release of reserved funds. As indicated in Attachment I, Mr. Fermin states that the source of funds for the requested $3,767,000,000 release of reserve are $1,645,879 in Airport Revenue Bond proceeds and $2,123,121 in Airport revenues appropriated for Capital Project purposes.

8. Attachment II, also provided by Mr. Satero, provides contract details for the "Other Contractors" identified in the budget table on the second page of this report, for which the Airfield Development Bureau has requested a release of reserved funds in the amount of $162,213.

Recommendations:

1. In accordance with Comment Nos. 2 and 3, reduce the requested release of reserved funds by $739,875.

2. In accordance with Comment No. 6, reduce the requested release of reserved funds for the MOU with the RWQCB by $73,800 from $125,000 to $51,200.

3. Approval of the release of reserved funds in the amended amount of $2,953,325 ($3,767,000 requested less $739,875 under Recommendation No. 1 above, less $73,800 for the Memorandum Of Understanding with RWQCB under Recommendation No. 2 above) is a policy matter for the Board of Supervisors.

Attachment I

San Francisco International Airport

P.O Box 8097
San Francisco CA 94128
Tel 650 821.5000
Fax 650.821.5005
www.flysfo.com

May 8, 2003

VIA FACSIMILE (415) 252-0461

Ken Bruce
Budget Analyst Office
1390 Market Street, #1025
San Francisco, CA 94102

Subject: Reserves – Runway Reconfiguration

Dear Mr. Bruce:

The release of reserved funds should be done as follows:

Issue 01	Bond Funds	$ 14,598.93
Issue 05	Bond Funds	142,992.83
Issue 06	Bond Funds	911,960.86
Issue 8B	Bond Funds	179,209.61
Issue 9A	Bond Funds	382,882.75
Issue 24a	Bond Funds	12,234.10
Fund 700	Capital Funds – per Lease and Use Agreement (AOF)	2,123,120.92
		$3,767,000.00

Document Reference: Controller's journal entry no. – JECO030000343 posted Oct. 3, 2002

To accelerate the spend-down of bond funds for arbitrage rebate purposes, the bond funds should be exhausted first. Please call me at (650) 821-5035 if you need further information.

Very truly yours,

Leo Fermin
Acting Deputy Airport Director
Business and Finance

Attachment II

Expended Y-T-D Fiscal Year 2002-2003 for ADB
thru April 3, 2003
Detail of Other Contracts

Contract Number	Contract Name/Description	Original FY02-03 Budget	Funding Released	Expended Y-T-D	Project Expend thru ~~6~~ 4/30	Total Projected FY 2002-2003
4087.A	ADEC	$ -	$ -	$ 212,564	$ 300,000	$ 512,564
7000.3	Hopkins Sutter/Foley Lardner	$ 75,922	$ -	$ 11,168	$ 25,000	$ 36,168
7000.4	Remy Thomas & Moose	$ 300,000	$ 300,000	$ 252,738	$ 100,000	$ 352,738
7011.5	BCDC	$ 125,000	$ 125,000	$ 125,000	$ -	$ 125,000
7000.17	O'Mclvaney	$ 70,000	$ -			
7000.12	Steefel Levits and Weiss	$ 78,134	$ -	$ 68	$ -	$ 68
7032.1	Bay Relations	$ 90,000	$ -	$ 758	$ -	$ 758
7013.3	Jones & Stokes	$ 650,000	$ 300,000	$ 97,655	$ 300,000	$ 397,655
7022.1	FAA Tower Citing Study	$ 26,260	$ -	$ 770	$ -	$ 770
7000.13A	Morrison & Foerster	$ 180,000	$ 180,000	$ 52,645	$ 100,000	$ 152,645
7000.24	EIR Printing	$ 600,000	$ 300,000	$ 2,519	$ 20,000	$ 22,519
7023.1	State Lands Commission	$ 75,000	$ -			
7018.11-.14	Public Outreach	$ 300,000	$ -	$ -	$ -	$ -
7000.18	City Attorney Work Order	$ 403,500	$ 403,500	$ -	$ 403,500	$ 403,500
XFER	City Planning Work Order	$ 175,000	$ 174,670	$ -	$ 180,000	$ 180,000
TBD	Environmental Consultants	$ 600,839	$ 200,000	$ -	$ -	$ -
TBD	Additional Planning Consultant	$ 107,394	$ 22,000	$ -	$ -	$ -
TBD	Communications Consultants	$ 104,160	$ -	$ -	$ -	$ -
TBD	EIR Grafics Assistance	$ 220,000	$ 15,000	$ -	$ -	$ -
TBD	ELO	$ 90,000	$ -	$ -	$ -	$ -
TBD	Luster/GKO	$ 522,914	$ -	$ -	$ -	$ -
						$ -
	Totals	$ 4,874,123	$ 2,020,170	$ 755,885	$ 1,428,500	$ 2,184,385

Item 16 - File 03-0693

Department: Civil Service Commission
Department of Human Resources

Item: Resolution fixing the prevailing rate of wages of employees of City contractors who work in City-owned or leased off-street parking lots, parking garages, and facilities used to store vehicles.

Description: On January 24, 2003, the Board of Supervisors approved Ordinance 3-03 (File 02-1504) that added Section 21.25-2 to the Administrative Code to require that employees of City contractors, working in City-owned or leased off-street parking lots, parking garages, and facilities used to store vehicles be paid the prevailing rate of wages[1]. That ordinance required that the Civil Service Commission provide the Board of Supervisors, within 60 days after the effective date of that ordinance, with wage data for the purpose of having the Board of Supervisors fix the prevailing rate of wages for employees of City contractors working in City-owned or leased off-street parking lots, parking garages, and facilities where vehicles are stored.

The Department of Human Resources (DHR) provided a report, dated February 18, 2003, presented to the Civil Service Commission at its March 3, 2003 meeting, which included data from three sources: 1) the State of California's Employment Development Division (EDD) California Cooperative Occupational Information System, which reports (a) survey results gathered from between 1999 and 2001 that show a rate of pay for unionized parking lot attendants ranging from $7.50 to $17.50 per hour, and (b) the survey results gathered from between 1999 and 2001 that show a rate of pay for non-unionized parking lot attendants ranging from $8.00 to $13.04 per hour, 2) the State of California's EDD Occupational Employment Statistics Survey for 2001, last updated in

[1] The prevailing rate of wage, as defined in the Administrative Code, Section 21.25-2, is "that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the area in which the Lease, Management Agreement, or Other Contractual Arrangement is being performed, if a majority of such workers are paid at a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that single rate being paid to the greatest number of workers."

the third quarter of 2002, which reports that the entry level hourly wage for parking lot attendants was $6.83, the mean hourly wage for parking lot attendants was $9.84, and the median hourly wage for parking lot attendants was $8.92; and 3) the Garage and Parking Lot Agreement between Parking Employers and Teamsters Automotive Employees, Local 665, which provides that, for the period December 1, 2002 through November 30, 2003, the rate of pay for parking and garage attendants ranges from $10.50 to $17.50 per hour depending on experience.

Comments:

1. According to Ms. Kate Favetti of the Civil Service Commission, on March 3, 2003, the Civil Service Commission submitted the DHR report dated February 18, 2003 to the Board of Supervisors in order for the Board of Supervisors to fix the subject prevailing rate of wages. As required by Section 21.25-2, the Civil Service Commission submitted the DHR report to the Board of Supervisors within 60 days of the effective date of Ordinance 3-03. This report is included in the Committee Packet for the Finance and Audits Committee meeting on May 21, 2003. Mr. Paul Zarefsky of the City Attorney's Office advises that the proposed resolution would fix the prevailing rate of wages for employees of City contractors, working in City-owned and leased off-street parking lots, parking garages, and facilities where vehicles are stored only if the Board of Supervisors determines the prevailing rate of wages based on the data contained in the DHR report of February 18, 2003 or on any other data or evidence that the Board of Supervisors deems appropriate for setting the subject prevailing rate of wages.

2. According to Mr. Geoff Rothman of the DHR, the DHR has not recommended the specific prevailing rate of wages to be fixed by the Board of Supervisors. However, Mr. Rothman advises that the DHR will be present at the Finance and Audits Committee meeting of May 21 to assist the Committee in fixing the prevailing rate of wages. Mr. Zarefsky states that a representative of the City Attorney's Office will also be available at that meeting to advise the Committee on this matter.

Recommendation:

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

BOARD OF SUPERVISORS
BUDGET ANALYST

Item 17 - File 03-0690

Department: Sheriff
Department of Public Works (DPW)

Item: Hearing to consider release of reserved funds for the Sheriffs Department in the amount of $2,375,147 to reimburse the General Fund for monies advanced by the General Fund for the planning and environmental review expenditures related to the San Bruno Jail Replacement Project. Such monies were advanced by the General Fund prior to the issuance of the subject Certificates of Participation.

Amount: $2,375,147

Source of Funds: Certificates of Participation (COPs) previously authorized by the Board of Supervisors (File 00-0783). The Mayor's Office of Public Finance issued $137,235,000 in COPs in September of 2000 to finance the San Bruno Jail Replacement Project.

Description: In September of 2000, the Board of Supervisors appropriated $151,241,017, which included the $137,235,000 in principal and $14,006,017 in estimated interest income from the sale of the Certificates of Participation (COPs) to finance the demolition of San Bruno Jail No. 3 and the construction of a new jail (File 00-1488). Of the $151,241,017 amount appropriated by the Board of Supervisors, the Board placed $7,842,000 on reserve, including (a) $4,300,000 to pay for environmental and other regulatory costs, and construction and project contingencies, (b) $3,250,000 for demolition of the existing San Bruno Jail No. 3, and (c) $292,000 for City Attorney and Sheriff Department costs.

The Sheriffs Department is now requesting the release of $2,375,147 out of the previously reserved $7,842,000, to reimburse the City's General Fund for expenditures advanced by the General Fund prior to the issuance of the COPs (see Comment 1). The balance of $5,466,853 ($7,842,000 less $2,375,147) would remain on reserve. The Controller has included the $2,375,147 as a General

Fund revenue source in projecting the June 30, 2003 year-end General Fund balance in the Controller's Nine-Month Budget Status Report, issued on May 1, 2003.

Comments:

1. According to Ms. Tina Olson of the Department of Public Works (DPW), $2,375,147 was advanced by the General Fund to pay for planning and environmental review costs for the new San Bruno Jail Replacement Project, as shown in the Attachment provided by DPW. These monies were advanced by the General Fund prior to the issuance of the subject COP financing. General Fund monies, totaling $2,375,147, were previously appropriated through a FY 1995-1996 Sheriff's Department supplemental appropriation in the amount of $1,196,000 (File 101-96-81), in the FY 1997-1998 Sheriff's Department annual budget in the amount of $1,000,000, and unexpended Sheriff's Department capital projects appropriations in the amount of $179,147. Ms. Olson states that the subject funds were used to pay for the costs of the initial environmental review and planning, including preliminary design and engineering for the San Bruno Jail Replacement Project.

2. As noted above, if the Board of Supervisors approves the requested release of $2,375,147 in reserved funds, $5,466,853 will remain on reserve. According to Ms. Olson, DPW expects that the remaining reserved funds of $5,466,853 will be sufficient to complete the San Bruno Jail Replacement Project purposes described above.

Recommendation: Approve the proposed requested release of reserves.

San Bruno Jail Project - Status of General Fund Appropriation Per FAMIS

FISCAL MO/YEAR: 10 2003 (APRIL 2003)
PROJECT: CSHBLD SHERIFF'S FACILITIES
PROJECT DETAIL: SF05 SAN BRUNO COUNTY JAIL NO. 3 1105H

		Budget	Expenditures	Balance
9301G	OTI FR 1G-GENERAL FUND	$2,375,147	$2,375,147	
	REVENUE TOTAL	2,375,147	2,375,147	
11	BOA LABOR SAN BRUNO	259,313	259,313	
12	BOE LABOR SAN BRUNO	432,133	433,484	-1,351
13	BCM LABOR SAN BRUNO	95,189	93,837	1,351
50	BEVERLY PRIOR ARCHIT	637,319	637,319	
52	KENNEDY JENKS/OLMM E	407,448	407,448	
53	THE DUFFEY COMPANY	267,941	267,941	
54	BASELINE ENVIRONMENT	87,098	87,098	
56	E P C CONSULTANTS	20,773	20,773	
59	HARDING LAWSON ASSOC	13,854	13,854	
61	CITY PLANNING	2,147	2,147	
62	1105H-COUNTY CLERK	875	875	
63	1105H-FISH & GAMES F	1,391	1,391	
82	STEPHENS,MCCARTHY	149,667	149,667	
	EXPENDITURE TOTAL	$2,375,147	$2,375,147	

Item 18 - File 03-0222

Note: This hearing was continued by the Finance and Audits Committee at its meeting of May 7, 2003. On March 5, 2003, the Finance and Audits Committee recommended File 03-0224, a Supplemental Appropriation Ordinance appropriating $349,671 in surplus recording fees and reappropriating $194,128 in equipment, materials and supplies and professional services for a total of $543,799 to cover shortfalls in salaries and services of other departments and for temporary salaries and fringe benefits to address the backlog of deed processing, appraisals, permits and appeals in the Assessor-Recorder's Office. The Finance and Audits Committee then requested that this companion hearing (File 03-0222) be calendared so that the Finance and Audits Committee can consider the Assessor-Recorder's Performance Measures for FY 2002-2003.

Department: Assessor-Recorder

Item: Hearing to analyze backlog of work of the Assessor's Office; (2) financial impacts of said backlog; and (3) analyze and establish performance timelines and performance measures for that office.

Description:

1. Attachment I, provided by the Assessor-Recorder is a listing of performance measures developed for calendar years 2002 and 2003. The Attachment also provides performance goals for calendar years 2002 and 2003.

2. Attachment II, a memorandum from the Assessor-Recorder, provides an update on the status of the Assessor-Recorder's processing backlog.

Comments:

1. The performance measures and performance goals shown in Attachment I were developed by the Assessor-Recorder working with the Controller's Special Projects Office. The Budget Analyst had reviewed an earlier version of the performance measures and suggested additional information on real property data which were incorporated into Attachment I.

2. Previously, the Assessor-Recorder provided historical actual performance for calendar years 2000 and 2001 to the Budget Analyst. However, that data was found to be unreliable according to Mr. Rich Hillis of the Assessor-Recorder's Office. The Budget Analyst notes that actual performance data is not yet available for calendar year

2002, which will be available when the Assessor-Recorder closes the assessment roll on June 30, 2003, and the Assessor-Recorder is unable to provide actual year-to-date performance data for calendar year 2003.

3. In Attachment II, a memorandum from the Assessor-Recorder concerning the current processing backlog, the Assessor-Recorder reports the following concerning backlogs:

- Deed Backlog in Transaction Unit – The backlog in the Transaction Unit has been reduced from 13,000 transactions as of January 8, 2003 to 10,500 transactions as of April 15, 2003. The value of the remaining 10,500 transactions is estimated at approximately $500 million in assessed value.

- Deed Backlog in Real Property – The backlog in the Real Property Division has been reduced from 3,900 assessable change of ownership transactions as of January 8, 2003 to 2,300 as of April 15, 2003. The value of the remaining 2,300 transactions is estimated to be $1 billion in assessed value.

- Permit Backlog – The new construction permit backlog in the office has increased from 7,300 as of January 8, 2003 to 8,100 as of April 15, 2003. The four new appraiser trainees hired in April of 2003 will be focusing primarily on outstanding new construction permits. The value of these 8,100 transactions is estimated to be $2.5 billion.

4. After reviewing the Assessor-Recorder's proposed performance measures, the Budget Analyst concludes that implementation of adequate management monitoring of such performance measures will represent an improvement over past practices in the Assessor-Recorder's Office. However, as noted above, historical performance data has been found to be unreliable by the current Assessor-Recorder. Therefore, since future performance cannot be compared to past performance using the proposed measures shown in Attachment I, it will not be possible to ascertain the level of improved performance compared to prior years before calendar year 2002.

Harvey M. Rose

cc: Supervisor Peskin
Supervisor Sandoval
Supervisor McGoldrick
Clerk of the Board
Controller
Ben Rosenfield
Ted Lakey

ASSESSOR-RECORDER'S OFFICE
Summary of Performance Measures

(Bolded data indicates goals. Other figures are actuals)

MEASURE	2002	2003 (through 4/30/03)
REAL PROPERTY		
Data: Deeds Received Assessable Deeds Received Permits Received Assessable Permits Received	 38,219 not avail. 24,034 not avail.	 12,810 not avail. 7,864 not avail.
1. Percentage of change of ownership transactions valued by June 30.	**85.0%**	**85.0%**
2. Percentage of new construction reassessments completed by June 30	**75.0%**	**85.0%**
3. Average number of change of ownership appraisals completed per appraiser.	**500**	**550**
4. Average number of new construction appraisals completed per appraiser (with added value).	**150**	**200**
TRANSACTION UNIT:		
Percentage of change of ownership documents	**95.0%**	**97.0%**

Source: Assessor-Recorder's Office

processed by March 1.		
1. Sales of single family dwellings processed within 30-days of sale.	**75.0%**	**85.0%**
2. Average number of deeds processed daily.	**120.0**	**150.0**
PERSONAL PROPERTY Data: Business Prop Stmts Received	10,365	
1. Percentage of mandatory audits completed by June 30	**44%**	**51%**
RECORDER Data Documents Recorded	246,790	
1. Percentage of Title Co. and walk-in documents recorded within 24 hours of receipt	100%	**100%**
2. Percentage of mailed documents recorded within 7 businesses days of receipt.	Not avail.	25%
3. Percentage of documents processed and returned to customer within 30 business days.	Not avail.	90%

Source: Assessor-Recorder's Office

City and County of San Francisco
Office of the Assessor-Recorder

MABEL S. TENG
Assessor-Recorder

MEMORANDUM

April 30, 2003

TO: SUPERVISOR AARON PESKIN
SUPERVISOR GERARDO SANDOVAL
SUPERVISOR JAKE MCGOLDRICK
Board of Supervisors' Finance Committee

FROM: MABEL TENG
Assessor

RE: Assessor-Recorder's Office Performance Measures

Per your request at our hearing last month, attached are the proposed performance measures for the Assessor-Recorder's Office.

Staff from the Assessor's Office and the Controller's Office worked together to develop these measures. The process included reviewing existing performance measures and surveying similar counties in California. The proposed measures will be utilized by the office's management staff as a tool to gauge the performance of the office's various divisions. We are also developing detailed reports for each employee in the office, notably the appraisers and transaction unit staff, to set goals and measure productivity to ensure that we are timely processing new transaction and working to reduce the valuation backlogs.

With regard to the backlogs, you should note that these are not included as ongoing performance measures. The proposed measures are designed to determine ongoing office productivity and to keep current on transaction processing. However, the Assessor's Office is also focused on reducing existing backlogs. I am prepared to report on these backlogs separately to the Board of Supervisors, as you deem necessary. The following information will give you an indication of our progress in reducing the backlogs since January:

- Deed Backlog in Transaction Unit – The backlog in the Transaction Unit has been reduced from 13,000 transactions to 10,500 transactions. The value of the remaining transactions is estimated at approximately $500 million in assessed value.

- Deed Backlog in Real Property – The backlog in the Real Property division has been decreased to 2,300 assessable change of ownership transactions compared to 3,900 in

January. The value of the remaining transactions is estimated to be $1 billion in assessed value.

- Permit Backlog – The new construction permit backlog in the office has increased from 7,300 in January to 8,100 as of April 15th. The four new appraiser trainees hired in April will be focusing primarily on outstanding new construction permits. The value of these transactions is estimated to be $2.5 billion.

Over the past four months the office has processed approximately 4,000 assessable transactions resulting in $1.3 billion in supplemental assessed values. This will generate an additional $14 million in property tax revenues to the City and public schools (approximately $7 million to the City's general fund). We have also been able to clear nearly 800 appeals cases. Although this is significant progress, the larger, more complex cases are still pending before the AAB. These 1,500 pending cases consist of property owners requesting reductions of over $10 billion in assessed value. These cases have the potential of reducing property tax revenues by $116 billion.

I look forward to working with you on these issues. Please call me if you have any questions.

City and County of San Francisco
Meeting Minutes
Finance and Audits Committee

Members: Aaron Peskin, Gerardo Sandoval and Jake McGoldrick

Clerk: Linda Laws

Wednesday, June 04, 2003 | **12:30 PM** | **City Hall, Room 263**

Special Meeting

Members Present: Aaron Peskin, Gerardo Sandoval, Jake McGoldrick.

MEETING CONVENED

The meeting convened at 12:36 p.m.

CONSENT AGENDA

All matters listed hereunder constitute a Consent Agenda, are considered to be routine and will be acted upon by a single roll call vote of the Committee. There will be no separate discussion of these items unless a member of the Committee or the public so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.

030780 [Lease of Real Property]
Resolution authorizing a Sublease renewal of approximately 117,826 square feet of space at 1235 Mission Street for the Department of Human Services. (Real Estate Department)

(Fiscal impact; Public Benefit Recipient.)
5/5/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.
RECOMMENDED..

030822 [Lease of Real Property]
Resolution authorizing the exercise of a five year option to extend the Lease of approximately 7,725 square feet of space at 3801 3rd Street, suites 110, 210, 220 and 230 for the Department of Human Services. (Real Estate Department)

(Public Benefit Recipient.)
5/6/03, RECEIVED AND ASSIGNED to Finance and Audits Committee
RECOMMENDED..

030823 **[Lease of Real Property]**

Resolution authorizing the exercise of a five year option to extend the Lease of approximately 1,800 square feet of space at 3801 3rd Street, suite 205 for the Department of Human Services. (Real Estate Department)

(Public Benefit Recipient.)

5/6/03. RECEIVED AND ASSIGNED to Finance and Audits Committee.

RECOMMENDED..

030880 **[Lease of Real Property]**

Resolution authorizing a lease renewal at 729 Filbert Street for the Department of Public Health. (Real Estate Department)

(Public Benefit Recipient.)

5/9/03, RECEIVED AND ASSIGNED to Finance and Audits Committee

RECOMMENDED..

030881 **[Lease of Real Property]**

Resolution authorizing a lease renewal at 2001 Van Ness Avenue/1700 Jackson Street for the Department of Public Health. (Real Estate Department)

(Public Benefit Recipient.)

5/9/03. RECEIVED AND ASSIGNED to Finance and Audits Committee

RECOMMENDED..

The foregoing items were acted upon by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

REGULAR AGENDA

030400 [Approval of Lease Amendment for Waterfront Restaurant]

Resolution approving Fourth Lease Amendment to Port Lease No. L-11859 between the Port Commission and Bundox Restaurant, Inc., a California corporation ("Tenant") for the lease of real property commonly known as the Waterfront Restaurant. (Port)

(Public Benefit Recipient.)

3/12/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/30/03, CONTINUED. Heard in Committee. Speakers: Harvey Rose, Budget Analyst; Ted Lakey, Deputy City Attorney; Kenneth Winters, Port of San Francisco; Mary Murphy, attorney for Bundox Restaurant.
Continued to 5/7/03.

5/7/03, CONTINUED. Speakers: None.
Continued to 5/21/03.

5/21/03, CONTINUED. Speakers: None.
Continued to 6/4/03.

Heard in Committee. Speakers: Kenneth Winters, Port of San Francisco; Roger Sanders, Mayor's Office of Community Development; Mary Murphy, attorney for Bundox Restaurant; Ted Lakey, Deputy City Attorney; Ernestine Weiss; Harvey Rose, Budget Analyst.
6/4/03 Amendment of the Whole bearing new title prepared in Committee.

AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE.

Resolution approving Fourth Lease Amendment to Port Lease No. L-11859 between the Port Commission and Bundox Restaurant, Inc., a California corporation ("Tenant") for the lease of real property commonly known as the Waterfront Restaurant for the term commencing on November 1, 2002 and ending January 31, 2025. (Port)

(Public Benefit Recipient.)

REFERRED WITHOUT RECOMMENDATION by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030527 [Reserved Funds, Recreation and Park Department]

Hearing to consider release of reserved funds, Recreation and Park Department (fiscal year 2000-2001 budget), in the amount of $1,087,131 to enable the department to manage, design and construct park and recreation facilities anticipated in the Department's Capital Plan. (Recreation and Park Department)

4/8/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

4/30/03, CONTINUED. Heard in Committee. Speaker: Gary Hoy, Recreation and Park Department.
Continued to 5/21/03.

5/21/03, CONTINUED. Heard in Committee. Speakers: Elizabeth Goldstein and Gary Hoy, Recreation and Park Department.
Continued to 6/4/03.

Speakers: None.
Release of reserved funds in the amount of $1,087,131 approved.

APPROVED AND FILED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030885 **[2003 Neighborhood Recreation and Park Facilities General Obligation Bond Sale]**

Resolution authorizing and directing the sale of not to exceed $20,960,000 City and County of San Francisco General Obligation Bonds (Neighborhood Recreation and Park Facilities Improvement Bonds, 2000), Series 2003A; prescribing the form and terms of said bonds; authorizing the execution, authentication and registration of said bonds; providing for the appointment of depositories and other agents for said bonds; providing for the establishment of accounts related thereto; approving the forms of official notice of sale and notice of intention to sell bonds; directing the publication of the notice of intention to sell bonds; approving the form and execution of the official statement relating thereto; approving the form of the continuing disclosure certificate; approving modifications to documents; ratifying certain actions previously taken; and granting general authority to City officials to take necessary actions in connection with the authorization, issuance, sale and delivery of said bonds. (Mayor)

(No Public Benefit Recipient.)

5/12/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Speakers: None.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030742 **[Appropriation, $1,600,000 - Department of Elections]**

Supervisor Gonzalez

Ordinance appropriating funding not to exceed $1,600,000 from the General Fund Reserve for professional services to implement a ranked-choice voting system for the Department of Elections for fiscal year 2002-03.

(Fiscal impact.)

4/29/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

5/21/03, AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE. Heard in Committee. Speakers: Supervisor Gonzalez; John Arntz, Department of Elections; Robert Bryant, Deputy City Attorney; Monique Zmuda, Controller's Office; Harvey Rose, Budget Analyst; James Bryant.

5/21/03 Amendment of the Whole bearing new title prepared in Committee.

5/21/03, CONTINUED AS AMENDED. Continued to 6/4/03.

Heard in Committee. Speakers: John Arntz, Department of Elections; Harvey Rose, Budget Analyst; James Bryant, A. Philip Randolph Institute; Adele Fasick, League of Women Voters; John Golinger, Center for Voting and Democracy; Male Speaker; Richard Marquez, Latino Democratic Club; Howard Wallace, Harvey Milk Democratic Club; Terry Baum; Angela Ramsey, District 3 Democratic Club; Robert Holland, Harvey Milk Democratic Club; Susan Peters; Tony Brasunas, Garlic and Grass; Dave Kadlecek, Californians for Electoral Reform; Jonee Levy, District 3 Democratic Club; Male Speaker; Gregory Richardson; Male Speaker; Charles Kalish; Male Speaker; Steven Hillard.

RECOMMENDED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030845 [Appropriation - $526,000, Department of Elections]

Supervisor Sandoval

Ordinance appropriating $2,416,160 from the General Fund Reserve to implement the ranked-choice voting public education plan for the Department of Elections for fiscal year 2002-03.

5/12/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: John Arntz, Department of Elections; Harvey Rose, Budget Analyst; James Bryant, A. Philip Randolph Institute; Adele Fasick, League of Women Voters; John Golinger, Center for Voting and Democracy; Male Speaker; Richard Marquez, Latino Democratic Club; Howard Wallace, Harvey Milk Democratic Club; Terry Baum; Angela Ramsey, District 3 Democratic Club; Robert Holland, Harvey Milk Democratic Club; Susan Peters; Tony Brasunas, Garlic and Grass; Dave Kadlecek, Californians for Electoral Reform; Jonee Levy, District 3 Democratic Club; Male Speaker; Gregory Richardson; Male Speaker; Charles Kalish; Male Speaker; Steven Hillard.

6/4/03 Amendment of the Whole bearing new title prepared in Committee.

AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE.

Ordinance appropriating $526,000 from the General Fund Reserve to implement the ranked-choice voting public education plan for the Department of Elections for fiscal year 2002-03.

RECOMMENDED AS AMENDED by the following vote:

Ayes: 3 - Peskin, Sandoval, McGoldrick

030794 [Exclusive Negotiating Agreement for Development of the Old Mint]

Mayor, Supervisor Daly

Resolution endorsing the City entering into an Exclusive Negotiating Agreement with the San Francisco Museum and Historical Society for the development of the Old Mint. (Mayor)

5/6/03, RECEIVED AND ASSIGNED to Finance and Audits Committee. Supervisor Daly requested to be added as co-sponsor

Heard in Committee. Speakers: Hala Hijazi, Mayor's Office of Economic Development; Michael Cohen, Deputy City Attorney; Ira Michael Hayman; Harry Parker, Fine Arts Museum of San Francisco; Walter Jelie, Mint Task Force; James Lazarus, San Francisco Museum and Historical Society; Robert Mendelsohn, San Francisco Museum and Historical Society; Michael Levin; Patrick Banks, Martin Building Company; Victor Marquez, San Francisco LaRaza Lawyers; Ink Mendelsohn, San Francisco Museum and Historical Society; Lorraine Dong, Chinese Historical Society of America; Al Lopez.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030795 [Conveyance of Old Mint]

Mayor, Supervisor Daly

Resolution authorizing the City to accept title to the Old Mint pursuant to a deed and programmatic agreement and adopting findings. (Mayor)

5/6/03, RECEIVED AND ASSIGNED to Finance and Audits Committee. Supervisor Daly requested to be added as co-sponsor

Heard in Committee. Speakers: Hala Hijazi, Mayor's Office of Economic Development; Michael Cohen, Deputy City Attorney; Ira Michael Hayman; Harry Parker, Fine Arts Museum of San Francisco; Walter Jelie, Mint Task Force; James Lazarus, San Francisco Museum and Historical Society; Robert Mendelsohn, San Francisco Museum and Historical Society; Michael Levin; Patrick Banks, Martin Building Company; Victor Marquez, San Francisco LaRaza Lawyers; Ink Mendelsohn, San Francisco Museum and Historical Society; Lorraine Dong, Chinese Historical Society of America; Al Lopez.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent. 1 - Sandoval

030379 **[CEQA Findings for Cruise Terminal Mixed-Use Project]**

Resolution adopting findings pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, including a statement of overriding considerations, in connection with the proposed mixed-use Cruise Terminal Project, located on Pier 30-32, a condominium tower on a portion of Seawall Lot 330, and a public open space project in the location of Pier 34 and 36, in the Port of San Francisco, City and County of San Francisco. (Port)

4/17/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: El St. John, San Franciscans for a Healthy Waterfront; Taline Sanassarian, Port of San Francisco; Monique Zmuda, Controller's Office; Wade Crowfoot, Aide to Supervisor Peskin; Earl Gee, San Franciscans for a Healthy Waterfront; Matthew Needham, San Franciscans for a Healthy Waterfront; Jim Haase.
Continued to 7/9/03.

CONTINUED by the following vote:
Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030371 **[Agreement to Sell approximately 22,000 sq. ft. of unimproved real property located at Beale and Bryant Streets and to Lease Piers 30-32 to San Francisco Cruise Terminal, LLC]**

Resolution approving and authorizing an Agreement with San Francisco Cruise Terminal, LLC for the Sale of approximately 22,000 square feet of real property located at the corner of Beale and Bryant Streets on Seawall Lot 330; approving and authorizing a 66-year Lease with San Francisco Cruise Terminal, LLC for Piers 30-32; adopting findings that the conveyance is consistent with the City's General Plan and eight Priority Policies of City Planning Code Section 101.1; authorizing expenditure of proceeds received under the Sale Agreement towards costs of the Brannan Street Wharf and Piers 30-32 Cruise Terminal Project; and authorizing the Port's Executive Director and the City's Director of Property to execute documents, make certain modifications and take certain actions in furtherance of this Resolution. (Port)

(Public Benefit Recipient; companion measure to File 030379.)

4/17/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: El St. John, San Franciscans for a Healthy Waterfront; Taline Sanassarian, Port of San Francisco; Monique Zmuda, Controller's Office; Wade Crowfoot, Aide to Supervisor Peskin; Earl Gee, San Franciscans for a Healthy Waterfront; Matthew Needham, San Franciscans for a Healthy Waterfront; Jim Haase.
Continued to 7/9/03.

CONTINUED by the following vote:
Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030605 **[Modification #9 to Lease and Use Agreement with US Airways, Inc. at Terminal 1 - SF International Airport]**

Resolution approving and authorizing the execution of Modification # 9 to the Lease and Use Agreement L-82-0120 with US Airways, Inc., to reduce terminal space in Terminal 1 of San Francisco International Airport. (Airport Commission)

(Public Benefit Recipient.)

4/3/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Cathy Widener, San Francisco Airport; Harvey Rose, Budget Analyst; Ted Lakey, Deputy City Attorney.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030540 **[Airport Concession Lease]**

Resolution approving the Terminal 3 Specialty Retail Store Lease between Brookstone Company, Inc., and the City and County of San Francisco, acting by and through its Airport Commission. (Airport Commission)

(Public Benefit Recipient.)

4/4/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Cathy Widener, San Francisco Airport; Harvey Rose, Budget Analyst; Ted Lakey, Deputy City Attorney.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030505 **[Outreach Advertising]**

Resolution designating the Asian Week to be outreach newspaper of the City and County of San Francisco for the Chinese community for outreach advertising for the fiscal year commencing July 1, 2003 and ending June 30, 2004. (Purchaser)

(Fiscal impact; No Public Benefit Recipient.)

3/31/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Wayne Wash, San Francisco Independent; Ted Lakey, Deputy City Attorney; Monique Zmuda, Controller's Office; Judith Blackwell, Office of Contract Administration; Michael Yamashita, Bay Area Reporter.

6/4/03 Amendment of the Whole bearing new title prepared in Committee.

AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE.

Resolution designating the Asian Week to be outreach newspaper of the City and County of San Francisco for the Chinese community for outreach advertising for the fiscal year commencing July 1, 2003 and ending June 30, 2004; and designating El Mensajero and the Bay Area Reporter to be outreach newspapers for the Hispanic and Lesbian, Gay, Bisexual and Transgender communities for the fiscal year commencing July 1, 2003 and ending June 30, 2004. (Purchaser)

(Fiscal impact; No Public Benefit Recipient.)

RECOMMENDED AS AMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030506 **[Official Advertising]**

Resolution designating the San Francisco Independent to be the official newspaper of the City and County of San Francisco for the category of Type 2 non-consecutive day official advertising, for the fiscal year commencing July 1, 2003 and ending June 30, 2004. (Purchaser)

(Fiscal impact; No Public Benefit Recipient.)

3/31/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speakers: Wayne Wash, San Francisco Independent; Ted Lakey, Deputy City Attorney; Monique Zmuda, Controller's Office; Judith Blackwell, Office of Contract Administration; Michael Yamashita, Bay Area Reporter.

6/4/03 Amendment of the Whole bearing new title prepared in Committee.

AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE.

Resolution designating the San Francisco Independent to be the official newspaper of the City and County of San Francisco for the category of Type 2 non-consecutive day official advertising, for the period of July 1, 2003 and ending August 30, 2003. (Purchaser)

(Fiscal impact; No Public Benefit Recipient.)

RECOMMENDED AS AMENDED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

030222 **[Performance measures and timeline for pending work in the Assessor's Office]**

Supervisor Dufty

Hearing to analyze backlog of work of the Assessor's Office; (2) financial impacts of said backlog; and (3) analyze and establish performance timelines and performance measures for that office.

2/11/03, RECEIVED AND ASSIGNED to Finance Committee. Sponsor requests this item be scheduled for consideration at the 2/19/03 Finance meeting.

2/13/03, TRANSFERRED to Finance and Audits Committee. New committee structure 2/17/03.

2/19/03, CONTINUED TO CALL OF THE CHAIR. Heard in Committee. Speakers: Supervisor Dufty; Mabel Teng, Assessor-Recorder; Edward Harrington, Controller; Harvey Rose, Budget Analyst; Theresa Contreau, Appraiser, Assessor-Recorder's Office, Local 21 representative; John Farrell, Assessor-Recorder's Office; Gus Kenup, Assessor-Recorder's Office; Janet Weinder, Management Assistant, Assessor-Recorder's Office; Tim Amber, Assessor-Recorder's Office; Alex Terrell, Appraiser, Assessor-Recorder's Office.

5/7/03, CONTINUED. Speakers: None.
Continued to 5/21/03.

5/21/03, CONTINUED. Speakers: None
Continued to 6/4/03.

Speakers: None.
Continued to 6/18/03.

CONTINUED by the following vote:

Ayes: 2 - Peskin, McGoldrick
Absent: 1 - Sandoval

ADJOURNMENT

The meeting adjourned at 5:24 p.m.

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET ANALYST

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642
FAX (415) 252-0461

May 29, 2003

TO: Finance and Audits Committee

FROM: Budget Analyst

SUBJECT: June 4, 2003 Finance and Audits Committee Meeting

Item 6 - File 03-0400

Note: This item was continued by the Finance and Audits Committee at its meeting of May 21, 2003.

Department: Port of San Francisco

Item: Resolution approving Fourth Lease Amendment to Port Lease No. L-11859 between the Port Commission and Bundox Restaurant, Inc., a California corporation ("Tenant) for the lease of real property known as the Waterfront Restaurant located at Pier 7 1/2 (Broadway and The Embarcadero).

Purpose of Lease: To amend the rent structure and term of the Lease based on the terms and conditions set forth in the Fourth Amendment.

Lessor: Port of San Francisco

Tenant: Bundox Restaurant, Inc.

No. of Square Ft.: The existing Lease between the Port and Bundox Restaurant, Inc. is for 19,253 square feet of space on the subject premises located at Pier 7 ½ consisting of approximately 9,189 square feet of in-door dining space, 2,705 square feet of outdoor dining space and 7,359 square feet of public access space and parking space for 10 vehicles. The public access space consists of an outside area extending around the waters edge on the east side of the restaurant and outdoor dining areas on the north side of the restaurant, adjacent to the parking area.

Term of Existing Lease Between the Port and Bundox Restaurant Inc.: 20 years, beginning on July 1, 1996 and terminating on June 30, 2016

Proposed Term of Lease Between the Port And Bundox Restaurant Inc. Under the Proposed Amendment:

An extension of an additional eight years and seven months, from the original termination date of June 30, 2016 to January 31, 2025

Current Rental Payments to Port by Bundox Restaurant, Inc.:

Base Rent

Base Rent is currently $21,785 monthly (approximately $2.37 per square foot per month based on 9,189 square feet of indoor dining space), or $261,420 annually. The Base Rent is adjusted every three years for a cost of living adjustment based on the Consumer Price Index, and, in year ten (as of July 1, 2006), the Base Rent would be adjusted to the greater of a cost of living increase based on increases in the Consumer Price Index, or 50 percent of the average total monthly rent, including percentage rent, paid by the tenant for the previous three years of the lease.

Percentage Rent:

Bundox Restaurant, Inc. shall pay to the Port the greater of 1) the Base Rent or 2) the Percentage Rent calculated at seven percent of gross revenues from the operation of the restaurant.

Total rent collected by the Port between Calendar Year 1997 and Calendar Year 2002 is as follows:

Year	Amount of Gross Revenues	Total Percentage Rent Reported by the Port	Rent Credits Applied	Total Rent Paid to Port Net of Rent Credits
1997[1]	$2,795,503	$258,669	$61,575	$197,094
1998	6,258,790	438,115	96,246	341,869
1999	6,941,517	485,906	105,763	380,143
2000	6,628,727	464,011	92,406	371,605
2001	4,702,050	329,143	38,459	290,684
2002[2]	3,688,560	265,218	7,205	258,013
Total	**$31,015,147**	**$2,241,062**	**$401,654**	**$1,839,408**

Proposed Rental Payments to Port by Bundox Restaurant, Inc. Under the Proposed Amendment:

Base Rent Under the Proposed Lease Amendment:

$10,000 monthly (approximately $1.09 per square foot per month based on 9,189 square feet of dining space) or $120,000 annually beginning retroactively to November 1, 2002 through the proposed termination date of January 31, 2025. After the "Threshold Date", which is the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000 annually, the Base Rent would be adjusted annually for a cost of living adjustment based on the Consumer Price Index. The proposed Base Rent is a reduction of $141,420 annually, or 54.1 percent, from the current Base Rent of $261,420 annually. Bundox would be required to pay "Deferred Rent", which is the difference between (a) the $10,000 monthly in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (b) the $21,785 monthly in Base Rent paid to the Port under the current lease, times the number of calendar months from November 1, 2002 to the Threshold Date. Such deferred rent is

[1] 1997 figures include November 1996 and December 1996 payments to the Port.

[2] 2002 figures do not reflect reduced rent paid by Bundox in November of 2002 and December of 2002 (see Comment No. 9).

required to be paid to the Port at either (1) the end of the lease term or 2) subsequent to the refinancing of the Lease or sale of the Waterfront Restaurant, to the extent that any excess sale proceeds exist after repayment of the Section 108 Loan (see Description below for information on the loan).

Percentage Rent Under the Proposed Lease Amendment:

Bundox Restaurant, Inc. shall pay to the Port the greater of 1) the Base Rent or 2) the Percentage Rent calculated at six percent of gross revenues, a reduction of one percent from the existing percentage of gross revenues from the operation of the restaurant.

Description: In December of 1994, the Board of Supervisors approved a new lease with Bundox Restaurant, Inc., or "Bundox", for the Waterfront Restaurant (File 65-94-17), which consists of a two-story building owned by the Port, public access space and a parking lot, at Pier 7 ½, on The Embarcadero at the foot of Broadway, for a 20-year lease period, at a Base Rent of $17,500 per month, or $210,000 annually, and a Percentage Rate of 7 percent. Prior to that time, Bundox had operated the Waterfront Restaurant at Pier 7 ½ under a lease with the Port since 1969.

The 1994 Lease provided for significant tenant improvements to the property, to be made by Bundox in two Phases, as explained by Ms. Carol Anderson of the Port on page 2 of Attachment II to this report. Under the provisions of the 1994 Lease, the Port was to pay for up to 50 percent of a maximum of tenant improvement total costs of $3,400,000, up to a maximum of $1,000,000 for Phase I and up to a maximum of $700,000 for Phase II, totaling a maximum of $1,700,000 (see Comment No. 1). The Port's share of the cost of tenant improvements, not to exceed $1,700,000, would be paid for in the form of Rent Credits, resulting in Bundox not having to pay to the Port the portion of the Percentage Rent which exceeded the Base Rent, over a ten year period (see Comment No. 4).

Ms. Anderson reports that because Bundox was unable to obtain financing for Phase I of the tenant improvements, the Lease became void on July 1, 1995 (Attachment II, page 3). Ms. Anderson reports that during the six-month period between December of 1994 and June 30, 1995, Bundox operated the Waterfront Restaurant under the 1994 Lease terms (i.e., the greater of Base Rent of $17,500 monthly or 7 percent of gross revenues). Bundox obtained preliminary approvals for loans from Heller First Capital and the Mayor's Office of Community Development (MOCD), which enabled Bundox to enter into the Lease. On June 24, 1996, the Board of Supervisors reaffirmed the previously voided (as of June 30, 1995) 20-year lease, for a new 20-year term from July 1, 1996 through June 30, 2016, and approved the First Amendment to the Lease and Consent to Encumbrance (File No. 65-94-17). Ms. Anderson notes that during the one-year period between June 30, 1995, when the 1994 Lease was voided, and June 24, 1996, when the Lease was reaffirmed, Bundox operated the Waterfront Restaurant on a month to month holdover basis under the pre-1994 Lease terms. According to Ms. Patel of the City Attorney's Office, under the Consent to Encumbrance, in the event of nonpayment of the MOCD loan by Bundox, MOCD would have the right to acquire the leasehold asset from Bundox which would include assuming obligations of the Lease, including all payments owed by Bundox to the Port. Accordingly, to pay the obligations of the lease, MOCD would have the option to either a) operate the Waterfront Restaurant or b) sublease the Waterfront Restaurant to a new owner subject to consent by the Port.

On November 1, 1996, Bundox entered into a Loan Agreement with the City through the MOCD Section 108 Loan Program, funded by the U.S. Department of Housing and Urban Development (HUD), in the amount of $3,250,000 (see pages 1 and 2 of Attachment III). The purpose of the loan was to fund the entire construction cost for Phase I and Phase II of the tenant improvements according to Mr. Lerma (see Comment No. 6). According to Ms. Anderson, the MOCD Section 108 Loan provided for more favorable

financing terms than the preliminary loan agreement with Heller First Capital. The Board of Supervisors approves acceptance and expenditure of Section 108 Revolving Loan Guarantee funds each year during approval of the Community Development Block Grant Program. However, as noted on page 2 of Attachment IV, provided by Mr. Lerma, the specific Section 108 Loan made by MOCD to Bundox, was not subject to Board of Supervisors approval.

On November 12, 1996, the Port Commission approved the Second Amendment to the Lease and Consent to Encumbrance (Resolution No. 96-117), which removed Heller First Capital as lender and consented to MOCD as lender, as explained on page 5 of Attachment II. The Port Commission approved the Third Amendment to the Lease (Resolution No. 97-70), on July 22, 1997, to provide for modifications to the size and location of the tenant improvements and allowed reduced rent[3], as provided for in the 1994 Lease, while the Waterfront Restaurant remained open for business, as explained on page 6 of Attachment II. According to Ms. Anderson, the Board of Supervisors did not approve the Second or Third Amendments to the Lease because the amendments only added minor modifications to terms of the Lease previously approved by the Board of Supervisors.

Ms. Anderson reports that without the proposed subject Fourth Lease Amendment restructuring of the Current Lease, Bundox will "most likely default" on the Lease, as explained on pages 2 and 3 of Attachment I, which would likely 1) require the Port to find another operator for the Waterfront Restaurant under less favorable terms than the existing Lease, and 2) result in the MOCD's inability to recover the remaining MOCD Section 108 Loan funds due from Bundox.

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[3] Under the terms of the 1994 Lease, Bundox would pay reduced rent of $5,000 per month, for up to nine months, during the construction period in which the restaurant was closed for business. Under the Third Amendment to the Lease, because Bundox intended to keep its business open during construction of Phase I of the tenant improvements, the Lease was amended to provide for reduced rent of $5,000 per month, for up to nine months, for the construction period in which the restaurant was open. According to Ms. Anderson, work for Phase I and Phase II of the tenant improvements were performed simultaneously during the approximate nine-month period from May of 1997 through January of 1998.

In order to prevent the Waterfront from defaulting on the Lease, the Port has, according to Ms. Anderson, amended the rent structure and term of the Lease in the Fourth Amendment, as follows:

- The term of the lease would be extended by eight years and seven months, from the existing lease ending date of June 30, 2016 to the proposed lease ending date of January 31, 2025.

- The Base Rent would be reduced, from $21,785 monthly or $261,420 annually to $10,000 monthly or $120,000 annually, with annual CPI adjustments after the Threshold Date, for the entire lease term from November 1, 2002 through January 31, 2025.

- Deferred Rent, which is the difference between (a) $10,000 in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (b) $21,785 in Base Rent paid to the Port under the current Lease, times the number of calendar months from November 1, 2002 to the Threshold Date, is required to be paid to the Port at either (1) the end of the lease term or 2) subsequent to the sale of the Waterfront Restaurant, to the extent that any excess sale proceeds exist after repayment of the Section 108 Loan.

- Percentage Rent would be reduced, from seven percent of gross revenues, to six percent of gross revenues from November 1, 2002 through January 31, 2025.

  However, from November 1, 2002 through the Threshold Date, the Percentage Rent is subordinate to operating expenses so that Bundox would not be required to pay any monthly percentage rent if expenses exceed gross revenues. If the Waterfront Restaurant generates a net operating income in any month, then Bundox would, pay 50 percent of the net operating income as principal debt reduction to the MOCD loan and retain the remaining 50 percent.

Under the proposed lease, from the Threshold Date through January 31, 2012, the Percentage Rent is no longer subordinate to operating expenses. However, Bundox would be required to pay 50 percent of the percentage rent which exceeds the base rent amount as principal debt reduction to the MOCD loan, and the remaining 50 percent would be paid to the Port.

- Rent credits for the cost of Bundox's share of the tenant improvements would not be granted by the Port to Bundox.

- Payment upon transfer of the Lease in connection with a sale of the Waterfront Restaurant would be distributed first, to pay the remaining balance of the MOCD Section 108 Loan, second, to pay for Port Deferred Rent and last, to be shared equally by the Port and Bundox should any net funds remain. In addition, the Port could renegotiate a new rental rate with the new owner after one-year.

Pages 4 through 6 of Attachment I contains a description of the proposed amended lease terms.

Comments:

1. According to Ms. Anderson, the tenant improvements began in May of 1997 and were completed in January of 1998. Ms. Anderson advises that the Port anticipated tenant improvement costs in 1994 of $2,930,000 ($1,875,000 plus $1,055,000) as described on page 8 of Attachment II, but the actual costs upon completion of the tenant improvements in January of 1998 totaled $3,277,545. Ms. Anderson notes that under the 1994 Lease, the Port agreed to pay up to 50 percent of the tenant improvements up to a maximum of $1,700,000, or $1,638,773 of the total tenant improvement costs of $3,277,545, through rent credits granted to Bundox by the Port which resulted in the Bundox not having to pay the Port the full amount of the Percentage Rent in excess of the Base Rent.

2. As previously noted, Deferred Rent is the difference between (1) $10,000 in Base Rent paid to the Port from November 1, 2002 to the Threshold Date under the proposed Fourth Amendment, and (2) $21,785 in Base Rent paid to the Port under the current Lease, times the number of calendar months from November 1, 2002 to the Threshold Date, which is the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000. As stated on page 8 of Attachment I, the Port estimates that the Deferred Rent would total approximately $600,984 ($21,784 less $10,000, the proposed monthly rent, or $11,784 X 51 months), based on an estimated Threshold Date of February 1, 2007, which is the latest date that the Threshold Date can occur. The Budget Analyst concurs with these calculations based on the assumption that the Threshold Date occurs on February 1, 2007. If the restaurant revenues exceed $6,000,000 prior to February 1, 2007, the total deferred rent would be less than $600,984 and the Base Rent would be subject to CPI adjustments before February 1, 2007.

3. As noted on page 7 of Attachment I, the Port estimates that total reduced rent to the Port under the proposed Fourth Amendment would be an estimated $2,003,679 for the period from 2003 through 2014, as follows:

- $364,186 in reduced rent, resulting from the reduction in percentage rent by one percentage point from 7 percent to 6 percent for the period from 2003 through 2014.
- $790,756 in reduced rent, resulting from the provision that the Port receives no percentage rent payments above the Base Rent for the period from 2003 through 2006; and
- $848,737 in reduced rent, resulting from the provision that the Port receives only 50 percent instead of 100 percent of the percentage rent due to the Port above the Base Rent for the period from 2007 through 2012.

Based on the Port's assumptions of revenue growth, as shown on pages 10 and 11 of Attachment I, the Budget Analyst concurs with these calculations, that the proposed Fourth Lease Amendment would result

in reduced rental revenue to the Port of $2,003,679. If Bundox is able to pay the Port an estimated $600,984 in Deferred Rent as noted on page 7 of Attachment I, total estimated reduced rent to the Port under the Fourth Amendment would be $1,402,695 ($2,003,679 less $600,984). However, this reduced rent would be partially offset by the Port not having to apply future rent credits to Bundox as explained in Comment No. 4.

4. As noted above, under the 1994 Lease, the Port would apply rent credits to the rent Bundox is to pay to the Port such that Bundox would not pay to the Port the full amount which the Percentage Rent exceeds the Base Rent. Based on actual tenant improvement costs, actual rent credits which could have been granted by the Port to Bundox total $1,638,773. Under the proposed Fourth Amendment, the Port would no longer have to apply rent credits to Bundox for the amount of the Percentage Rent in excess of Base Rent. Page 2 of Attachment I shows that the total rent credits applied to date against rent is $401,655, with the balance of $1,237,118 in rent credits remaining ($1,638,773 less $401,655). Total estimated reduced rental revenues to the Port, therefore, ranges from $165,577, if Bundox pays back to the Port Deferred Rent ($1,402,695 less $1,237,118) to $766,561 if Bundox is not able to pay the Port back the Deferred Rent ($2,003,679 less $1,237,118).

5. Ms. Anderson reports on page 8 of Attachment I that the proposed rent under the Fourth Amendment is comparable to San Francisco market rents. Ms. Anderson states that the Port determined market rents, based on an informal survey of similarly sized "white tablecloth" restaurants in San Francisco. As noted on page 8 of Attachment I, Ms. Anderson states that,

> "the collective opinion by brokers is that the current market rate for a 'white tablecloth' restaurant in the San Francisco Bay Area comparable to the Waterfront would be in the $1.00/s.f. -$2.00/s.f. range, with percentage rent at about 5%."

As noted above, the proposed Fourth Lease Amendment is approximately $1.09 per square foot per month for the Base Rent and six percent of gross revenues under the percentage rent, which is at the low end of the range of $1.00 to $2.00 per square foot cited above to be the market value for base rent. Also, since future CPI adjustments to the Base Rent will not occur until the Threshold date is reached (the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000) the Base Rent is likely to be considerably below market rates over the remaining term of the current lease (through June 30, 2016) and the extended term of the lease under the Fourth Lease Amendment (July 1, 2016 through January 31, 2025).

6. According to Mr. Al Lerma of the MOCD, the Section 108 Loan Program provides loans exceeding $100,000 to businesses that support the economic development initiatives of the City including reducing unemployment and maintaining a diversified economic base. Page 1 of Attachment III provided by Mr. Lerma contains an explanation of why Bundox qualified for a MOCD Section 108 Loan, the purpose of the loan, a description of the loan program, the loan payment terms, and an explanation of the financial reporting requirements under the loan. As noted on Page 3 of Attachment III, MOCD receives periodic financial statements from Bundox.

7. According to Mr. Lerma, MOCD received, the audited financial statements of Bundox for 2001 which showed a net loss by Bundox for the fiscal year from the operation of the Waterfront Restaurant. As explained on page 1 of Attachment IV in a memorandum provided by Mr. Lerma, if Bundox defaults on the Section 108 Loan, then the MOCD would a) have to pay rent to the Port in order to keep the lease in good standing, and b) be required to continue making loan payments to HUD for the outstanding Section 108 loan balance. As further stated on pages 1 and 2 of Attachment IV, the source of funds for such rent payments and loan payments would be from 1) program income generated from MOCD's revolving loan funds, and 2) the annual Community Development Block Grant.

8. According to Mr. Lerma, the MOCD will agree to amend the Loan Agreement to 1) extend the term of the loan period by 13 years, from the current ending date of February 2012 to the ending date of January 31, 2025, thereby reducing the monthly loan payment by $11,105, from $33,000 to $21,895 and 2) reduce the interest rate on the loan from nine percent to six percent. Page 3 of Attachment IV, provided by Mr. Lerma compares the debt service under the Original Loan terms with the debt service under the MOCD Revised Loan terms.

9. According to Ms. Anderson, Bundox began paying reduced Base Rent of $10,000 on November 1, 2002, prior to Board of Supervisors approval, on the expectation that the Board of Supervisors would approve the proposed lease amendment. According to Ms. Patel, Bundox is legally obligated to pay the Port the difference between the current rental rates and rental rates collected since November 1, 2002 if the proposed Fourth Amendment to the Lease is not approved by the Board of Supervisors. The Budget Analyst notes that the Port does not have assurance that any additional rent payments due to the Port by Bundox from November 1, 2002 would be paid if this resolution were not approved by the Board of Supervisors. The Budget Analyst also notes that the proposed legislation does not designate an effective date of November 1, 2002 for the Fourth Amendment. Therefore, the Budget Analyst recommends amending the proposed resolution to include the November 1, 2002 effective date.

10. Under the proposed Fourth Amendment, the Port would receive reduced rent ranging from an estimated minimum of $165,577 to an estimated maximum of $766,561 (see Comment No. 4). However, as noted in Comment 5, the proposed Fourth Lease Amendment is approximately $1.09 per square foot per month for the Base Rent, which is at the low end of the range of $1.00 to $2.00 per square foot cited by the Port as market value for the base rent. Also, since future CPI adjustments to the Base Rent will not occur until the Threshold date is reached (the earlier of (a) February 1, 2007, or (b) the date gross revenues of the restaurant exceeds $6,000,000), the Base Rent is

likely to be considerably below market rates over the proposed extended term of the lease which is January 31, 2025 under the subject Fourth Lease Amendment.

11. According to Ms. Anderson, the Port has on occasion entered into agreements for temporary reductions in rent with Port tenants when such tenants face temporary financial difficulties. However, such tenants are then required to reimburse the Port in full, any amounts not paid under such temporary rent reductions. Ms Patel states that, under Appendix B3.581(g) of the City's Charter, the Port has the exclusive authority to administer leases granted by the Port Commission. Ms. Anderson advises that such written payment agreements do not require modifications to the Lease, and are not subject to Board of Supervisors approval since the Port does not waive the right to full rent payments under the terms of the agreements.

12. The Finance and Audits Committee previously requested that the Port provide the Committee with a formal survey of comparable restaurant rents. Attachment V, provided by the Port, is a copy of a report prepared by Clifford Associates, dated May 5, 2003 in response to the Finance and Audits Committee's request to provide comparable restaurant rent data. Regarding the Clifford Associates report, the Budget Analyst notes that the appraisal report points out advantages to both the lessor, the Port, and the tenant, Bundox, from the proposed lease modification and provides comparable leases in Table 1. The appraisal report does not alter the projected loss of revenue to the Port shown in our report or the conclusion that the reduced rent for Bundox is at the low end of the range compared to other restaurant leases and that the rent to be charged by the Port to Bundox will remain at the low end because future rent adjustments based on the CPI will not occur until 2007. Although the Clifford Associates appraisal report states that the proposed base rent of $1.09 per square foot per month is within the range of $1.03 to $2.50 per square foot per month for comparable space, that statement acknowledges that the proposed rent is at the low end of comparable

rents. The reduced percentage rent of six percent of gross receipts, for both food and beverage, which does not become effective until 2007, also is generally lower than the percentage rents shown in the comparable rents on Table 1 of the appraisal.

Advantages of the proposed lease modifications to the Port and to the tenant include:

<u>Advantages to Port</u>

- Remaining Rent Credits for tenant improvements will be waived.
- The Port will not have to find a new tenant for the restaurant space.

<u>Advantages to Tenant</u>

- Significant base rent reductions and percentage rent reductions
- No CPI adjustment until 2007
- No percentage rent until 2007
- Extension of lease by eight years and seven months.

13. Mr. Ken Winters of the Port has provided the Budget Analyst with Attachment VI, a memorandum discussing some of the issues cited in the aforementioned Clifford Associates report. In Attachment VI, Mr. Winters states that, "when viewed as a function of 6% of all gross sales" that the rent to be paid by Bundox under the proposed lease would range from $2.17 per square foot per month (based on gross sales of $4,000,000 in gross sales annually) to $3.26 per square foot per month (based on $6,000,000 in gross sales annually). The Budget Analyst notes that the Waterfront Restaurant reported gross sales of $3,688,560 in calendar year 2002, which would result in a percentage rent of $221,314 annually under the proposed lease modification (six percent of $3,688,560) or $2.01 per square foot per month ($221,314 divided by 12 months divided by 9,189 square feet). However, the Budget Analyst notes that, under the proposed lease modification, the Port receives no percentage rent payments above the Base Rent for the period from 2003 through 2006 and the Port receives only 50

percent, instead of 100 percent, of the percentage rent due to the Port above the Base Rent for the period from 2007 through 2012 (see Comment No. 3).

14. Attachment VI also notes that, under the proposed lease modification, the Port would realize savings because the Port would no longer be required to reimburse Bundox for remaining tenant improvement costs which the Port was liable for under the original lease. By Mr. Winters' calculation, this benefit to the Port effectively doubles the base rent, increasing base rent from $1.09 per square foot per month to $2.18 per square foot per month. However, the Budget Analyst notes that the benefit to the Port of not having to reimburse Bundox for tenant improvement costs is $1,237,118 (see Comment No. 4). This savings to the Port is equivalent to approximately $0.50 per square foot per month under the extended term of the proposed lease modification.[4] When added to the proposed base rent of $1.09 per square foot per month, the total base rent would be $1.59 per square foot per month, which would still be closer to the low end of comparable base rents cited in the Clifford Associates appraisal, of between $1.03 per square foot to $2.50 per square foot as noted in Comment No. 12.

Recommendations: 1. In accordance with Comment No. 9, amend the proposed resolution to include the November 1, 2002 effective date of the Fourth Modification to the Lease.

2. Approval of the proposed resolution, as amended, is a policy matter for the Board of Supervisors.

[4] The proposed lease modification would be effective from November 1, 2002 through January 31, 2025, or 267 months ($1,237,118 divided by 267 months, divided by 9,189 square feet results in $0.50 per square foot per month).

MEMORANDUM

TO: Leanne Nhan, Budget Analyst Office

FROM: Carol Anderson, Port of San Francisco

RE: Waterfront Restaurant Lease Amendment

DATE: April 4, 2003

Below are the Port's responses to the questions posed by you in your emails to Ken Winters.

What is the history of the Waterfront Restaurant at the Port?

The Bundox Restaurant Inc. ("Waterfront") has operated at the same location since 1969 when Al and Cheryl Falchi bought the Pier 7 Café. The restaurant operated until 1973 when it was severely damaged by a fire that destroyed Pier 7. A new building was constructed and, in July 1975, the Waterfront Restaurant reopened at the present location. In 1994, the Port and the Waterfront entered into a new 20-year lease in the form of Port Lease L-11859 (the "Lease").

In 1996, the Falchi's proposed to expand and significantly remodel the Waterfront Restaurant. To fund the proposed capital and tenant improvements, the Falchi's obtained a $3.25 Million loan from the Mayor's Office of Community Development ("MOCD"), referred to as the "MOCD Loan". Approximately $1.4 Million of the MOCD Loan were utilized to build public access improvements required by BCDC. The MOCD Loan also required the Borrower to create and maintain 85 new full-time jobs for City residents.

Because the proposed improvements increased the value of the Port's real estate asset as well as public access on the waterfront, the Port agreed to participate in the capital investment through credits applied against rent payable by the Waterfront. Specifically, the Port agreed to give Waterfront a rent credit, up to a maximum of $1.7 million, or approximately 50% of percentage rent[1] payable in excess of minimum rent. The Port and Falchi's amended the terms of the Lease to reflect this agreement in 1997.

The Waterfront has consistently generated rental income to the Port since 1969. In addition, the restaurant serves as an important anchor tenant at the foot of Broadway and the Embarcadero.

[1] ~~In a typical office lease, the tenant pays rent calculated as a specific dollar amount per each square foot~~ occupied ($/s.f.). In a typical restaurant lease rent is calculated as the greater of a specific dollar amount per each square foot occupied by the restaurant ($/s.f.) *versus* a percentage of gross sales produced on the premises.

What is the current exact square footage of the Waterfront?
The Waterfront now totals 11,894 square feet in dining area, of which 9,189 s.f. is interior dining space which may be used year-round, with an additional 7,359 square feet in public access and parking areas.

What are the net revenues received by the Port as a result of the Lease, from 1997 to the present?

Below, please find a summary of the actual numbers taken from the percentage rent reports for the period 1997-2002 for Bundox. Though I recognize that in some cases the numbers do not add up as you might expect them to, they are the actual numbers per these reports. The numbers below vary slightly from those originally presented to you due to rounding.

Year	Gross Sales	Total % Rent Due to Port	Minimum Rent	Percent Rent Overage Paid to Port	Percent Rent Utilized as Rent Credits to Waterfront
1997	$ 2,795,503	$ 195,685	$ 110,000	$ 87,094	*$61,575
1998	$ 6,258,790	$ 438,115	$ 197,500	$ 144,369	$ 96, 246
1999	$ 6,941,517	$ 485,906	$ 221,498	$ 158,645	$ 105,763
2000	$ 6,628,727	$ 464,011	$ 232,995	$ 138,610	$ 92,406
2001	$ 4,702,050	$ 329,143	$ 232,995	$ 57,689	$ 38,459
2002	$ 3,688,560	$ 258,199	$ 247,206	$ 10,807	$ 7,205
	$31,015,147	$ 2,171,059	$ 1,242,194	$ 597,214	$ 401,655

*Total of Percentage Rent Utilized as Rent Credits from Lease Commencement through 1997, per Port percentage rent records. The rent credit balance totals $1,298,346.

What problem is being addressed by the Lease amendment?
The Falchi's expected to repay the sizeable MOCD Loan undertaken in 1997 for the capital improvements through increased sales resulting from their total renovation of the Waterfront Restaurant. In addition to simply providing more cash flow, the increased sales would enable the Falchi's to utilize the rent credits provided by the Port as its contribution towards the capital improvements. The Falchi's could apply the dollars saved as a result of the rent credits against the monthly MOCD loan payments.

However, the sales projections turned out to be too optimistic. Waterfront's sales began to drop in late 2000 due to the decline in the S.F. Bay Area high-tech market and overall economy. Sales were further negatively impacted by the events of September 11, 2001. Beginning in late 2000 and continuing to today, sales have declined to a point where they are not sufficient to produce any significant percentage rent in excess of minimum rent. As a result of this low level of sales, the Falchi's have been unable to receive rent credits for their capital investments as contemplated by the Lease. Without the expected rent relief and excess cash flow, the Waterfront has found it increasingly difficult, if not impossible, to cover its fixed costs, keep current on Port minimum rent, and to make interest payments on the sizeable MOCD Loan.

Unless the Waterfront is provided immediate and significant economic relief, it will most likely default on the Lease. Such a default would adversely impact both the Port and the City. The Port would be forced to find another operator for the Waterfront, presumably through a bidding process. Whether an operator of an upscale restaurant can be found in this economy is very uncertain.[2] Most likely, the Port would have to offer more favorable terms than those in the Lease, or contemplated in the proposed lease amendment, to attract a new operator in this economy. Even if an operator were found, the process of finding a new operator, negotiating a deal and seeking all approvals of the deal would take many months to complete, during which time the Port would receive absolutely no rental income.

The City would be negatively impacted by a default as well. As noted above, the City, acting through MOCD, loaned the Falchi's $3.25 Million for specified leasehold improvements. The MOCD Loan was secured primarily by a leasehold deed of trust. If the Falchi's default on the loan, the City could seek to foreclose the leasehold deed of trust. However, the Lease would provide little or no economic relief to the City. Given the state of the economy, the City would not be able to find a new operator willing to assume the terms of the existing Lease <u>and</u> pay some or all of the MOCD Loan. Accordingly, MOCD would likely have a relatively small recovery on its loan. This loss of loan funds would directly lower, dollar for dollar, the amount of funds available to MOCD for future economic development loans (and result in a concomitant loss of future jobs that would have been created by these loans).

<u>What is the solution to the problem?</u>
The solution to the problem is to prevent the Waterfront from defaulting on the Lease and MOCD Loan and enable it to continue as an economically viable, long-term tenant of the Port and the community of San Francisco. Towards this goal, MOCD and the Port have negotiated with the Waterfront a comprehensive restructuring of the MOCD Loan and Lease. This restructuring is necessary to enhance the Waterfront's cash flow, which will in turn enable the Waterfront to continue repaying the MOCD Loan and rent to the Port.

The proposed Lease restructuring is predicated on a cash flow model that fits within the projected operations of the Waterfront. Essentially, it provides the Waterfront approximately four years of "breathing room" to get back on its feet, as described below.

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[2] In fact, given the current restaurant rental market, the Port believes that no viable substitute tenant for the Waterfront will be found in the foreseeable future. The failure rate of "white table" restaurants in San Francisco is at an all time high and finding replacement tenants in this market is extremely difficult, if not impossible. According to Golden Gate Restaurant Association, the San Francisco restaurant industry lost approximately 14% (annualized) of its restaurants during 2001. This would total approximately 450 restaurants out of a total of 4200 restaurants. As example of this, the Port is in the process of executing a lease assignment at Pier 33 north for a high end restaurant space for 6,772 s.f., minimum rent of $1.04/s.f., percentage rent of 5% for year 1, 6% for year 2 and 7% for year 3 and thereafter. A restaurant space at Pier 33 south, though vastly inferior to the Waterfront, has been vacant for over a year, and totals approximately 4,865 s.f.. This space is under lease to a master tenant who has been attempting to sublease the restaurant at $6,000 per month, or $1.25/s.f., with no percentage rent, and to date has been unsuccessful at leasing the space.

While a more detailed description of the Lease amendment terms is provided further below, the general terms of the Lease modification are as follows:

(1) Extension of the term of the Lease from August 30, 2016 to February 1, 2025;
(2) Reduction of the base rent from $21,784 to $10,000 per month;
(3) Reduction of the percentage rent from 7 percent to 6 percent;
(4) Application of a portion of the percentage rent payable to the Port instead to the MOCD Loan as accelerated principal paydown for a certain time period; and
(5) Participation by the Port in refinance or sales proceeds.

The MOCD Loan amendment is not subject to Board of Supervisors approval. However, the general terms of this amendment are as follows:

(1) Reduction of the interest rate from 9 percent to 6 percent; and
(2) Extension of the loan term and amortization schedule to January 31, 2025, thereby reducing loan payments from approximately $33,000 to $21,895 per month.

Description and Analyses of Lease Amendment Terms

Term:
The Port will extend the term of the lease to January 31, 2025.[3] A 20+ year lease term increases the value and desirability of the Waterfront with regard to a potential sale or refinance, due to the ability of a purchaser to amortize its investment over a commercially reasonable period of time. Creating such increased value is important to the City and Port because it would better enable the City to recover the MOCD loan funds and the Port an opportunity to recapture its "deferred rent" (as explained below).

Monthly Base Rent:
Commencing on November 1, 2002 and continuing throughout the Term, the Waterfront agrees to pay a monthly base rent of Ten Thousand Dollars ($10,000.00). After the Threshold Date, the base rent will be adjusted in direct proportion to the percentage increase in the Consumer Price Index (CPI). The Threshold Date is the earlier of (a) the first day of the calendar month following the date when gross receipts exceed Six Million Dollars ($6,000,000) in a Fiscal Year, or (b) February 1, 2007.

Deferred Rent:
The Port has subordinated a certain amount of rent as a result of Waterfront's current level of sales revenues and the anticipated time Waterfront will need to emerge from its current economic situation.

"Deferred Rent" is the difference between (i) $10,000 (base rent paid by the Waterfront from November 1, 2002 to the Threshold Date); and (ii) $21,784.79, (the base rent under the current Lease) times the number of calendar months from November 1, 2002 to the Threshold Date. The Port estimates the Deferred Rent to total $600,984, based on a

[3] The Lease extension of approximately 9 years coincides with the MOCD loan extension, so that both the Lease and MOCD Loan will have co-terminus expiration date.

Threshold Date of February 1, 2007 ($11,784.79 X 51 months). Deferred Rent will be repaid to the Port at the end of the Lease term or when and if there is a sale of the Waterfront Restaurant to the extent excess sale proceeds exist after repayment of the MOCD loan.

Percentage Rent:
Waterfront agrees to pay percentage rent to Port in the amount of six percent (6%) of gross receipts. Percentage Rent due each month is limited to the amount such percentage rent exceeds the base rent for said month—in no event will total rent to the Port exceed 6% of gross sales revenues. The following outlines how the Percentage Rent will be payable during the term of the Lease.

1. Commencing from November 1, 2002 to the Threshold Date, Waterfront's obligation to pay percentage rent will be subordinate to the payment of its operating expenses. That is, Waterfront will not have to pay any monthly percentage rent if its expenses exceed its income. But, to the extent Waterfront generates a net operating income in any month, Waterfront must pay 50% of that net operating income to MOCD as additional principal debt reduction of the MOCD Loan in lieu of paying percentage rent to the Port.[4] Waterfront will be entitled to retain the remaining 50% of NOI. This recovery period is designed to provide the flexibility to Waterfront to cover current expenses during the critical next four years.

2. For the period commencing from the Threshold Date to January 31, 2012, Waterfront will make monthly payments of percentage rent based upon its gross receipts (without regard to the its operating expenses). During this period, Waterfront will owe the Port the greater of base rent or 6% of gross sales. However, the Port will require Waterfront to pay 50% of the overage amount (i.e., the difference between 6% of gross sales and base rent) as principal debt reduction of the MOCD Loan. This overage amount is expected to reduce the MOCD principal amount additionally by approximately $765,000. This will significantly shorten the time necessary to pay down the MOCD loan, which is amortized over 20 years per the proposed modification.

3. For the period commencing from February 1, 2012 and continuing for the remainder of the Term, Waterfront will owe the Port the greater of base rent or 6% of gross sales, with no portion of such amount paid to MOCD.

Deletion of Improvement Credits:
The concept of rent credits for improvements made to the premises by Waterfront will be deleted in its entirety. As explained above, rent credits were structured into the Lease to reflect that portion of the capital and tenant improvements adding public access and value

[4] The maximum amount of NOI Waterfront would have to pay to MOCD would be the amount that would otherwise be due under percentage rent as calculated based on gross receipts (i.e., 6% of gross receipts, less base rent).

to the Port's asset. However, because of the low sales, the Waterfront was not able to utilize most of these rent credits.

The restructured Lease provides Waterfront a more immediate and direct means of receiving credit for its capital improvements than the original rent credit approach. As explained above, the base rent has been reduced by $11,784.79/month and the percentage rent from 7% to 6%/month for the life of the Lease term. In addition, the Port receives no percentage rent payments until the Threshold Date, After the Threshold Date until January 31, 2012, the Port will share 50% of the percentage rent payments with MOCD. Overall, the above modifications enable Waterfront to fully recapture the $1.7 million originally contemplated in the Lease, and are based on Waterfront Restaurant sales projections.

Payments Upon Transfer of Lease and Refinancing of Debt:
Waterfront agrees that if, at any time during the Term, the Waterfront transfers this Lease in connection with a sale of the restaurant business or any of the assets of the restaurant business, the net proceeds will be distributed as in a priority order. First, the proceeds will be used to pay off the balance of the MOCD loan. Next, the proceeds will go to pay the Port Deferred Rent. The remainder of the proceeds, if any, will be shared equally by the Port and Waterfront. As well, the Port would have opportunity to renegotiate new lease rates with a new owner after a year. The year-long time interval provides the Port the time to understand the business and realistically project performance of the new owner/operator so as to obtain the most favorable terms to the Port when it re-negotiates the new lease rates.

<u>What are safeguards for the future?</u>
Waterfront will be required to follow and implement the recommendations of a consultant, retained under contract with the San Francisco Small Business Development Center, who is currently performing a review of the Waterfront's operations with the goal of increasing the profitability of the restaurant. The Port has also required that the Waterfront provide annual financial statements, including profit and loss and balance sheet, at the end of each fiscal year prepared by an independent accountant and certified by the tenant as fairly representing tenant's financial condition. In addition, the Port will continue to have the default remedies under the lease so if Waterfront fails to perform, Port can pursue such remedies.

<u>What is the estimated total reduction in revenue to Port as result of reduction in percentage rent?</u>
Sales and expense projections provided by the Waterfront through 2007 were utilized to analyze cashflow during the lease. The Port extended these projections utilizing a 3% growth rate through 2014, acknowledging that even extending projections this far out is not very useful, as many variables come into play that influence performance. However, utilizing figures per the attached spreadsheets and per the proposed structure, for the period 2003 – 2014, the difference in percentage rent is estimated as follows:

Total Percentage Rent at 7%:	$ 3,389,308
Total Percentage Rent at 6%:	$ 3,025,122
Difference/Reduction Estimated in Rent to Port:	$ 364,186

As discussed above, the current market rate for percentage rent for a restaurant the size of the Waterfront is in the 5%-6% range.

What is the estimated total reduction in revenue to Port as result of reduction in rent?
The estimated total reduction in revenue to the Port for the period projected from 2003-2014 as a result of a reduction in the rent consists of four categories as follows:

(1) Deferred Rent: The Port has subordinated a certain amount of rent as a result of Waterfront's current level of sales revenues and the anticipated time Waterfront will need to emerge from its current economic situation. "Deferred Rent" is estimated to total $600,984. However it must be noted that this amount may be repaid to the Port per the structure when and if the Waterfront sells the restaurant, by utilizing net sale proceeds remaining after total repayment of the MOCD loan.

(2) Per the proposed structure, as discussed above, the revenue lost to the Port resulting from the difference of percentage rent of 7% and 6 % for this time period totals $364,186.

(3) Per the proposed structure, the Port's percentage rent overage over minimum rent is subordinate to the Waterfront's NOI. Therefore, the Port will forego approximately four years (2003-2006) of percentage rent. Per the attached spreadsheet, calculating percentage rent at the proposed 6%, this amount totals $790,756.

(4) Per the proposed structure, 50% of the percentage rent due to the Port from the Threshold Date (estimated at February 1, 2007) through 2012 is to be paid instead as priority principal repayment to MOCD. Per the attached spreadsheet, calculating percentage rent at the proposed 6%, this amount totals $ 848,737.

Therefore, assuming deferred rent is paid back, the potential revenue concession made by the Port during this period would be $1.4 Million. If deferred rent is not collectible, this concession would increase to potentially $2 Million.

Note that during this period, the reduction in minimum rent is irrelevant because sales are high enough to place the lease in percentage rent.

What is the estimated "deferred rent" between November 1, 2002 and Threshold Date?
The Lease amendment provides that Deferred Rent stops accruing the earlier to occur of February 1, 2007 or the date when Waterfront's sales reach $6 million. The Port cannot predict with certainty when Waterfront's sales will increase to $6 million, and therefore has utilized the date of February 1, 2007. Given this, the maximum "deferred rent" will equal $600,984 ($11,784.79 X 51 months).

Provide a list of other Port/City restaurant leases with similar NOI provisions:
There are no other Port restaurant leases which provide that percentage rent is subordinate to Net Operating Income. This provision was structured into the deal because of the need to provide immediate temporary relief to the Waterfront. Note that this is available only for the period November 1, 2002 until the Threshold Date, estimated at the outside at February 1, 2007.

Provide further explanation of transfer language re "...any unpaid Deferred Rent forgiven in event of an approved sale":
Deferred rent is to be repaid only from net profits remaining upon sale of the restaurant. As explained above: First, net proceeds of a sale or refinance will first go to pay any unpaid balance remaining on the MOCD Loan; Second, should any funds remain, they will then go towards repayment to the Port of any Deferred Rent accrued between November 1, 2002 and the Threshold date, estimated at approximately $600,984. In the event the Falchi's are unable to sell the Waterfront at a sufficiently high price to pay both the MOCD and Deferred Rent, any unpaid Deferred Rent will be forgiven by the Port and the new assignee of the Lease will not be obligated to pay any such remaining amount. The Port reserves the right to consent to a sale. In the event of a refinance, however, should such a refinance not produce sufficient proceeds to pay off the deferred rent, this balance will be carried forward.

The Proposed Lease is at Current Market
As discussed in the April 4th memo, the Port believes that proposed lease rates are comparable to the current San Francisco restaurant market. The proposal reflects rents typical of a restaurant of Waterfront's size, large relative to most, and quality, operating in today's economic climate. No new restaurant leases have been executed for a number of years in San Francisco for restaurants comparable in size and quality to the Waterfront. However, the collective opinion by brokers is that the current market rate for a "white tablecloth" restaurant in the San Francisco Bay Area comparable to the Waterfront would be in the $1.00/s.f. -$2.00/s.f. range, with percentage rent at about 5%. According to brokers, percentage rents from 5% on the low side to 7% at the absolute highest, are the range in which restaurants can afford to pay rent and stay in business.

Informal restaurant "comparables" as from various brokers include Boulevard Restaurant at Mission/Embarcadero, which reportedly grosses $8 million annually, has a minimum base rent $2.00-$3.00/s.f. and percentage rent between 5% and 6%, and One Market Restaurant which reportedly has a minimum base of approximately $2.00/s.f., and percentage rent of 5%. Max's Café near PacBell Park recently closed due to the economic climate, and reportedly totaled 12,000-13,000 s.f. with a rental rate of $2.00/s.f.

The proposed rates for the Waterfront restaurant are well within the range of rates as discussed above. Waterfront's minimum rent per square foot when calculated ranges from $1.08/s.f. based on the interior dining area of 9,189 s.f. which is utilized year round, down to $.84/s.f., when the two out door dining areas, totaling an additional 2,705 s.f., are added to the calculation. The percentage rent of 6% is mid-range of the generally accepted range for restaurant rents

	Minimum Rent	Percentage Rent
Current S.F. Market Rent:	**1.00/s.f.-$1.50/s.f.**	**5%-6% of gross sales**
Proposed Waterfront Rent:	**$.84/s.f. - 1.09/s.f.**	**6% of gross sales**
Current Waterfront Rent:	$1.78/s.f.	7% of gross sales

WATERFRONT

Projected @ 5 % Growth	2003	2004	2005	2006	2007	2008
GROSS REVENUES	$ 4,825,443	$ 5,305,787	$ 5,395,151	$ 5,652,891	$ 5,923,518	$ 6,219,694
OPERATING EXPENSES						
Total Cost of Sales	$ 1,287,242	$ 1,415,966	$ 1,437,948	$ 1,509,845	$ 1,585,337	$ 1,632,897
Total Cost Of Labor	$ 1,720,552	$ 1,892,607	$ 1,918,250	$ 2,014,163	$ 2,114,871	$ 2,178,317
Operating / General Expenses	$ 1,135,409	$ 1,186,008	$ 1,216,104	$ 1,257,240	$ 1,299,887	$ 1,338,884
Taxes	$ 39,320	$ 43,252	$ 43,826	$ 46,017	$ 48,318	$ 50,818
Interest	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447
Bank Cards & Other Discounts	$ 157,757	$ 162,499	$ 167,374	$ 172,395	$ 177,567	$ 182,894
FTB Minimum Annual Tax	$ 800	$ 800	$ 800	$ 800	$ 800	$ 800
Total Operating Expenses	$ 4,449,528	$ 4,809,579	$ 4,892,749	$ 5,108,907	$ 5,335,228	$ 5,493,058
Port Percentage Rent 6%	$ 289,527	$ 318,347	$ 323,709	$ 339,173	$ 355,411	$ 373,182
PORT Minimum Rent Payment	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000
Percentage Rent Overage	$ 169,527	$ 198,347	$ 203,709	$ 219,173	$ 235,411	$ 253,182
MOCD Loan Payment	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735
Total Lease/Loan Expenses	$ 382,735	$ 382,735	$ 382,735	$ 382,735	$ 618,146	$ 635,917
NET OPERATING INCOME	$ (6,820)	$ 113,473	$ 119,667	$ 161,249	$ (29,856)	$ 90,719
NOI Distribution						
MOCD as Addl Principal Paydown	$ -	$ 56,736	$ 59,833	$ 80,624	$ -	$ -
Waterfront as Cushion	$ -	$ 56,736	$ 59,833	$ 80,624	$ -	
Percentage Rent Overage Distribution						
Total Percent Rent Overage	N/A	N/A	N/A	N/A	$ 235,411	$ 253,182
Overage to MOCD (Addl Prin. Paydown)	$ -	$ -	$ -	$ -	$ 117,706	$ 126,591
Overage to PORT	$ -	$ -	$ -	$ -	$ 117,706	$ 126,591

2009	2010	2011	2012	2013	2014	
$ 6,530,679	$ 6,857,213	$ 7,200,073	$ 7,560,077	$ 7,938,081	$ 8,334,985	
$ 1,681,884	$ 1,732,341	$ 1,784,311	$ 1,837,840	$ 1,892,976	$ 1,949,765	
$ 2,243,667	$ 2,310,977	$ 2,380,306	$ 2,451,715	$ 2,525,266	$ 2,601,024	
$ 1,379,051	$ 1,420,422	$ 1,463,035	$ 1,506,926	$ 1,552,134	$ 1,598,698	
$ 53,318	$ 55,818	$ 58,318	$ 60,818	$ 63,318	$ 65,818	
$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	$ 108,447	
$ 188,381	$ 194,032	$ 199,853	$ 205,849	$ 212,024	$ 218,385	
$ 800	$ 800	$ 800	$ 800	$ 800	$ 800	
$ 5,655,548	$ 5,822,837	$ 5,995,070	$ 6,172,395	$ 6,354,965	$ 6,542,937	
$ 391,841	$ 411,433	$ 432,004	$ 453,605	$ 476,285	$ 500,099	
$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 120,000	$ 1,440,000
$ 271,841	$ 291,433	$ 312,004	$ 333,605	$ 356,285	$ 380,099	
$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	$ 262,735	
$ 654,576	$ 674,168	$ 694,739	$ 716,340	$ 739,020	$ 762,834	
$ 220,555	$ 360,208	$ 510,263	$ 671,342	$ 844,095	$ 1,029,213	
$ -	$ -	$ -	$ -	$ -	$ -	
$ 271,841	$ 291,433	$ 312,004	$ 333,605	$ 356,285	$ 380,099	
$ 135,920	$ 145,716	$ 156,002	$ 166,802	$ -	$ -	
$ 135,920	$ 145,716	$ 156,002	$ 166,802	$ 356,285	$ 380,099	$ 1,585,122
						$ 3,025,122

BUNDOX (WATERFRONT RESTAURANT LEASE AMENDMENT COMPARISON

ORIGINAL LEASE L-11859

Background:	Bundox had been a tenant at Pier 7/1/2 since 1969. Bundox Requested a new lease with a proposed business plan for restaurant renovation and expansion requiring significant capital investment.
Date of Lease:	December 20, 1994.
Port Commission Approval:	Resolution No. 94-133 October 25, 1994
Board of Supervisor Approval:	Resolution No: 1035-94 File No: 65-94-17 Ordinance No. 412-94 December 19, 1994
Premises:	Restaurant: 9,650 s.f.; Parking: 2,828 s.f.; Outdoor Patio/Public Access: 8,668 s.f.
Lease Term:	20 Years, to Commence as of "Commencement Date" or by 7/30/92, or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms, and (v) receipt of Port Building Permit for Phase I.
Percentage Rent:	7% of Gross Receipts
Minimum Base Rent:	$5,000/mo until Phase I TI's done during time restaurant closed and under construction for a maximum of 9 months; then $17,500/mo, with CPI increase every 3 years.

Tenant Improvements:	Per Plant Construction Preliminary Construction Estimate, September 10, 1993, partially modified March 23, 1994. Note this estimate did not include other costs associated with the overall renovation, such as furniture, fixtures, and equipment, as well as additional soft costs. Phase I Improvements: Budget: $1.875 Million. Building area expansion and improvements to the second floor of the building Phase II Improvements: Budget $1.055 Million. Outside of building. Demolition of finger pier and construction of replacement pier; construction of two outdoor eating areas, one valet parking area, and new public access walkway along water.
Rent Credits from Port:	Allowable at 50% of Certified Costs by Waterfront: Phase I: Maximum Rent Credits, $1 million Phase II: Maximum $700,000; Rent Credits returned to Waterfront at rate of 40% of the Percentage Rent due to Port in excess of Minimum Base Rent.
Financing:	None described in lease. However, Commencement Date contingent on Waterfront obtaining financing of TI's at commercially reasonable terms for Phase I improvements.
Other:	Affirmative Action Plan required per lease.
Comments:	Lease was Void as Waterfront did not fulfill requirement for Lease Commencement. Commercially reasonable financing for TI's not obtained, therefore no building permit was issued by the Port. However, Waterfront was still in possession and continued to pursue financing.

REAFFIRMATION AND AMEND. TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	Once Lease became Void as of 7/1/95, Bundox asked the Port to reaffirm the Lease, extend the time for Bundox to obtain financing until June 30, 1996, to include certain modifications to the Lease and to consent to encumbrance of the leasehold by Bundox's proposed lenders. In early 1996, Bundox entered into negotiations for financing with Bank of America and the Small Business Administration. In June 1996, Bundox's negotiations with B of A and SBA stalled and Bundox entered into negotiations with Heller First Capital. The Reaffirmation was modified to replace BofA and SBA with Heller First Capital and the SF Mayor's Office of Community Development (MOCD). Heller provided the Port with satisfactory proof of a loan commitment to satisfy the Lease condition and the Lease went into effect July 1, 1996.
Date of Amendment:	June 28,1996
Port Commission Approval:	Resolution No: 96-15 February 27, 1996
Board of Supervisor Approval:	File No: 65-96-10 Ordinance No: 261-96 June 24, 1996
Lease Term:	Commencement Date or June 30, 1996, or Lease is Void. Term up to 22 years if Phase I/II done at same time; Term of 20 years at completion of Phase I TI's or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms as evidenced by a commitment letter of loan authorization issued by a qualified lender.
Financing:	Preliminary Approval of Heller First Capital ("Heller") and the MOCD as approved "Lenders".

Encumbrance:	Consent to the encumbrance of Bundox's Leasehold by lenders through a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor of both Heller, for a note not to exceed $1.25 Million, and MOCD, with a note not to exceed $2.0 Million.
Lease Amendments regarding Security Interests of Lender:	If Lease terminates for any reason or is rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, lender has the right to enter into a new lease on the same terms and conditions if they have remedied any monetary defaults; Lenders can assign the lease without the Port's consent in connection with lender's security documents if such assignment is by judicial or non-judicial foreclosure or deed in lieu of foreclosure, and any other assignments to a third party at a foreclosure sale must be approved by the Port; Lenders must consent to any voluntary surrender of the Lease; disposition of any insurance proceeds in case of loss, any eminent domain or condemnation awards or damages payable under the lease shall be first made to lenders as to their deeds of trust, and the Port waives the right to obtain a lien on any thing that may constitute a part of the fixtures on the Premises during the term of the loans.

AMENDMENT NO. 2 TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	The lease went into effect on July 1, 1996 as a result of Heller First Capital providing satisfactory proof of a loan commitment. Although Heller had conditionally agreed to provide financing for the project, Bundox was able to obtain more favorable financing terms from MOCD. As a condition to providing the financing, MOCD requested the Port to consent to the encumbrance of the Lease. As well, the Reaffirmation was modified to delete provisions that were previously negotiated to suit the requirements of prior potential lenders. This amendment does not add any new provisions that had not been previously approved by the Port Commission and Board of Supervisors. Its purpose is to remove Heller as lender and consent to MOCD as lender, and to make non-substantial clerical corrections to the previous Reaffirmation and Amendment.
Date of Amendment:	November 13, 1996
Port Commission Approval:	Resolution No. 96-117 November 12, 1996
Financing and Encumbrance:	Approval of MOCD as lender and Consent to the encumbrance of Bundox's Leasehold by a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor MOCD, with a note not to exceed $3.25 Million.
Security Interests of Lender:	Substantially the same as provided for above.

AMENDMENT NO. 3 TO LEASE

Background:	Construction of the Waterfront Restaurant redevelopment project commenced May 1, 1997.
Date of Amendment:	July 22, 1997
Port Commission Approval:	Resolution No. 97-70 July 22, 1997
Minimum Base Rent:	Bundox requested an amendment to the Lease to provide that Minimum Base Rent of $5,000/mo during the construction period be allowed in the event Bundox kept the restaurant open during construction. Bundox wanted to keep the restaurant open during construction to retain employees and customers, but requested lower minimum rent due to limited sales volume expected in conjunction with relatively high operating costs.
Premises:	Restaurant: 11,184 s.f.; Parking: 4,153 s.f.; Outdoor Patio/Public Access: 6,608 s.f.
Premises/BCDC Public Access Improvements:	BCDC required that public access improvements be made in areas adjacent to Bundox premises resulting in modifications in the size and location of public access improvements
Tenant Improvements:	Phase II Improvements were modified to delete the construction of replacement pier and modification of the public access walkway along the waters' edge.

BUNDOX (WATERFRONT RESTAURANT LEASE AMENDMENT COMPARISON

ORIGINAL LEASE L-11859

Background:	Bundox had been a tenant at Pier 7/1/2 since 1969. Bundox Requested a new lease with a proposed business plan for restaurant renovation and expansion requiring significant capital investment.
Date of Lease:	December 20, 1994.
Port Commission Approval:	Resolution No. 94-133 October 25, 1994
Board of Supervisor Approval:	Resolution No: 1035-94 File No: 65-94-17 Ordinance No. 412-94 December 19, 1994
Premises:	Restaurant: 9,650 s.f.; Parking: 2,828 s.f.; Outdoor Patio/Public Access: 8,668 s.f.
Lease Term:	20 Years, to Commence as of "Commencement Date" or by 7/30/92, or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms, and (v) receipt of Port Building Permit for Phase I.
Percentage Rent:	7% of Gross Receipts
Minimum Base Rent:	$5,000/mo until Phase I TI's done during time restaurant closed and under construction for a maximum of 9 months; then $17,500/mo, with CPI increase every 3 years.

Tenant Improvements:	Per Plant Construction Preliminary Construction Estimate, September 10, 1993, partially modified March 23, 1994. Note this estimate did not include other costs associated with the overall renovation, such as furniture, fixtures, and equipment, as well as additional soft costs. Phase I Improvements: Budget: $1.875 Million. Building area expansion and improvements to the second floor of the building Phase II Improvements: Budget $1.055 Million. Outside of building. Demolition of finger pier and construction of replacement pier; construction of two outdoor eating areas, one valet parking area, and new public access walkway along water.
Rent Credits from Port:	Allowable at 50% of Certified Costs by Waterfront: Phase I: Maximum Rent Credits, $1 million Phase II: Maximum $700,000; Rent Credits returned to Waterfront at rate of 40% of the Percentage Rent due to Port in excess of Minimum Base Rent.
Financing:	None described in lease. However, Commencement Date contingent on Waterfront obtaining financing of TI's at commercially reasonable terms for Phase I improvements.
Other:	Affirmative Action Plan required per lease.
Comments:	Lease was Void as Waterfront did not fulfill requirement for Lease Commencement. Commercially reasonable financing for TI's not obtained, therefore no building permit was issued by the Port. However, Waterfront was still in possession and continued to pursue financing.

REAFFIRMATION AND AMEND. TO LEASE AND CONSENT TO ENCUMBRANCE

Background:	Once Lease became Void as of 7/1/95, Bundox asked the Port to reaffirm the Lease, extend the time for Bundox to obtain financing until June 30, 1996, to include certain modifications to the Lease and to consent to encumbrance of the leasehold by Bundox's proposed lenders. In early 1996, Bundox entered into negotiations for financing with Bank of America and the Small Business Administration. In June 1996, Bundox's negotiations with B of A and SBA stalled and Bundox entered into negotiations with Heller First Capital. The Reaffirmation was modified to replace BofA and SBA with Heller First Capital and the SF Mayor's Office of Community Development (MOCD). Heller provided the Port with satisfactory proof of a loan commitment to satisfy the Lease condition and the Lease went into effect July 1, 1996.
Date of Amendment:	June 28,1996
Port Commission Approval:	Resolution No: 96-15 February 27, 1996
Board of Supervisor Approval:	File No: 65-96-10 Ordinance No: 261-96 June 24, 1996
Lease Term:	Commencement Date or June 30, 1996, or Lease is Void. Term up to 22 years if Phase I/II done at same time; Term of 20 years at completion of Phase I TI's or lease is Void. Requirements for Commencement Date include: (i) Receipt of Conditional Use Permit by City Planning Dept., (ii) BCDC Permit, (iii) Adoption of Ordinance by S.F. Board of Supervisors approving Lease, (iv) Financing of TI's at commercially reasonably terms as evidenced by a commitment letter of loan authorization issued by a qualified lender.
Financing:	Preliminary Approval of Heller First Capital ("Heller") and the MOCD as approved "Lenders".

Encumbrance:	Consent to the encumbrance of Bundox's Leasehold by lenders through a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing in favor of both Heller, for a note not to exceed $1.25 Million, and MOCD, with a note not to exceed $2.0 Million.
Lease Amendments regarding Security Interests of Lender:	If Lease terminates for any reason or is rejected or disaffirmed pursuant to bankruptcy or other laws affecting creditors' rights, lender has the right to enter into a new lease on the same terms and conditions if they have remedied any monetary defaults; Lenders can assign the lease without the Port's consent in connection with lender's security documents if such assignment is by judicial or non-judicial foreclosure or deed in lieu of foreclosure, and any other assignments to a third party at a foreclosure sale must be approved by the Port; Lenders must consent to any voluntary surrender of the Lease; disposition of any insurance proceeds in case of loss, any eminent domain or condemnation awards or damages payable under the lease shall be first made to lenders as to their deeds of trust, and the Port waives the right to obtain a lien on any thing that may constitute a part of the fixtures on the Premises during the term of the loans.

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Tenant Improvements:	Phase II Improvements were modified to delete the construction of replacement pier and modification of the public access walkway along the waters' edge.

MAYOR'S OFFICE OF COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO

WILLIE LEWIS BROWN, JR.
MAYOR

ROGER SANDERS
DIRECTOR

DATE: March 25, 2003

TO: Leanne Nhan, Budget Analyst

FROM: Al Lerma, Program Director

RE: Bundox, Inc. dba The Waterfront Restaurant

Below are responses to your questions regarding Bundox, Inc. dba The Waterfront Restaurant –

1. Why did Bundox Restaurant, Inc. qualify for an MOCD loan?

   After the Loma Prieta quake in 1989 and the collapse of the freeway along the Embarcadero the Port and the City began an effort to revitalize the San Francisco waterfront to expand business, tourism and recreational opportunities. The Waterfront Restaurant has been located along the Embarcadero for 31 years. The business had an opportunity to renovate and expand their restaurant with support from the Port of San Francisco and the MOCD. The Section 108 loan program as described below was an economic development loan program intended to support such efforts to revitalize and expand business opportunities in areas targeted for development such as the Embarcadero corridor.

   The request from The Waterfront Restaurant at the time represented an opportunity to help launch revitalization efforts along the Embarcadero and to encourage other businesses to invest along the Embarcadero. The project provided an opportunity to create and retain jobs and to improve and expand the business at its existing location. Since then there have been a number of other improvements (Renovation of the Ferry Building, the Extension of the Muni Light Rail to Pier 39, and the opening of Pac Bell Park) that have helped to reshape and revitalize the San Francisco waterfront. The Waterfront loan request met all of the job creation and underwriting requirements at MOCD and was recommended for funding in late 1995 and an approved loan agreement was signed in November 1996.

2. **What was the purpose of the loan?**

The purpose of the HUD Section 108 business loan was to pay for the following uses for The Waterfront Restaurant renovation project:

Leasehold improvements	$ 2,347,248
Furniture, Fixtures & Equipment	$ 485,000
Interest Reserve	$ 170,000
Debt Repayment	$ 200,000
Working Capital	$ 47,752
	$ 3,250,000

3. **Describe the MOCD loan program?**

San Francisco Mayor's Office of Community Development offers three loan programs to stimulate economic development and assist small businesses. These loan programs are distinguished primarily by loan size.

- **Micro-Enterprise Revolving Loan Program** - providing loans up to $25,000 to support micro-enterprise and self employment efforts of low and moderate income San Franciscans interested in starting or expanding their own small businesses. A Micro-enterprise is defined as a business that has five or less employees. Applicants should demonstrate experience in the business for which the loan is requested and exhibit a source of repayment of the loan.

- **Small Business Revolving Loan Fund** - providing existing small businesses with loans up to $100,000* (loans may exceed this amount if business demonstrates significant economic impact) which can be used for a number of purposes, including working capital, equipment purchase, and other business expansion activities.

- **Section 108 Loan Program** - for loans exceeding $100,000 to businesses identified as consistent with and supporting specific economic development initiatives of the City. The primary strategy of the Section 108 economic development program is to support the goals of the City's overall economic development efforts. These efforts include:

    a.) reducing unemployment and under-employment through job training and expansion of employment and job opportunities;
    b.) maintaining a vital, balanced and diversified economic base that provides job opportunities for a highly diverse labor force;

The Bundox dba The Waterfront Restaurant loan was made under the Section 108 loan program. The Section 108 Loan Program is funded by funds from the US Department of Housing & Urban Development (US-HUD).

4. **What was the loan payment schedule under the 9 percent interest rate, and under the 6 percent interest rate?**

   Original Loan Payment Terms:
   Loan Amount: $ 3,250,000
   Interest Rate: 9%
   Term: 17 Years
   Monthly Payment: $ 31,161

   Proposed Revised Loan Terms:
   Interest Rate: 6%
   Term: Extended through Feb. 2025 to coincide with SF Port proposed lease term
   Monthly Payment: $ 22,429

   The MOCD is working with a business consultant from the SF Small Business Development Center to provide technical assistance to The Waterfront Restaurant during this downturn in our local and national economy. The revised loan terms are based on a detailed review of The Waterfront's business operations by this office with the goal of providing some recommendations to improve and strengthen the business operations of The Waterfront Restaurant going forward. This will help to preserve a long time San Francisco business as well as the approximately 89 jobs of its employees.

5. **Is the business required to be audited or required to produce audited financial statements under the loan? If so, what where the results?**

   The Bundox, Inc. provides annual year end business tax returns to MOCD which are reviewed by our staff. In addition, periodic financial statements are provided and reviewed as requested. The business also provides to MOCD copies of the State of California Board of Equalization audit done every two years under California Sales and Use Tax Law.

   During the audit term from 4/1/96 – 03/31/99 the business was required to pay $ 30,819 in taxes under a settlement agreement related to revisions in the tax law at the time regarding gratuities charged by restaurants. The business appealed the determination but was unsuccessful and was required to pay the back taxes. As a result The Waterfront Restaurant revised their internal policy to assess the appropriate taxes on gratuities to comply with the Board of Equalization audit findings.

   During the audit term from 7/1/99 – 6/30/02 no significant findings were identified by the Board of Equalization's audit review for Bundox, Inc. dba The Waterfront Restaurant.

   Bundox, Inc. has experienced a significant decline in revenue since the year 2001 and has been unable to meet the debt service on their MOCD loan since October 2001. While they are delinquent on their loan payments, Bundox, Inc. has been working closely with a restaurant consultant provided by MOCD through the Small Business Development Center. The consultant is assisting Bundox, Inc. in identifying ways to cut costs and generate additional revenues during this downturn in the economy. Bundox, Inc. relies

heavily on the tourist trade and convention business to generate revenues, both of which have suffered significantly in the post 9/11 marketplace.

We expect that with the restructuring of the current loan terms along with the ongoing technical assistance support of the Small Business Development Center, that the Bundox, Inc. will be able to restart making their loan payments.

Attached are the following documents for Bundox, Inc.

- A copy of 2001 Tax Return (fiscal year runs from March to February)
- A copy of an interim P&L/Balance Sheet (from March 2002 to December 2002 – 10 Mos.)

MAYOR'S OFFICE OF COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO

WILLIE LEWIS BROWN, JR.
MAYOR

ROGER SANDERS
DIRECTOR

DATE: March 25, 2003

TO: Leanne Nhan, Budget Analyst

FROM: Al Lerma, Program Director

RE: Bundox, Inc. dba The Waterfront Restaurant

1. Please describe how the loan is secured?

The loan is secured by a leasehold deed of trust on the property. We also have a UCC-1 (Uniform Commercial Code-1 Financing Statement) filed on the business assets (furniture, fixtures & equipment) with the Secretary of State's office. In addition, we have personal guarantees from Al & Cheryl Falchi.

2. Explain in detail what will occur if the borrower defaults.

If the borrower defaults and the business is unable to continue, MOCD would work with the Port to put the lease on the market in order to solicit a new tenant to buy out our interest. In the meanwhile, MOCD would have to pay rent to the Port in order to keep the lease in good standing. With the economy in a recession MOCD would likely only recoup a fraction of the outstanding loan balance by selling the leasehold interest. In addition, a going out of business sale for the furniture, fixtures & equipment would likewise only generate a fraction of the original value of the equipment since so many restaurants have closed in the past year and there is a lot of restaurant equipment available at bargain prices.

At the moment we could stand to lose not only approximately 85-90 local jobs but also the adverse consequences of having a defaulted loan on our books. Since MOCD borrowed these funds from HUD through the Section 108 Loan Program, we must continue to make loan payments to HUD for the outstanding loan balance. In addition, the opportunity costs of a defaulted loan of this size would result in MOCD funding less community programs with funds that would instead have to be used to pay back the remaining loan balance to HUD. As you can see this would have a serious impact on funding for our community development programs.

The source of funds for these costs in the event of a loan default would be primarily from two areas. The first source would be the program income generated from other active loans in our

portfolio. The second source would be the annual CDBG grant that CCSF receives from HUD each year.

Program income from our revolving loan funds goes toward making new loans to small businesses in San Francisco. Funds from our annual CDBG Grant are used to fund a broad spectrum of services for low-to-moderate income San Franciscans. As mentioned previously, funds used to repay a defaulted loan would have an adverse impact on the program services currently funded by this office.

These are the primary reasons why it makes more sense to assist the Waterfront in the near term to stay in business and continue to service their lease and their loan payments with this office. As the economy improves in the future, it would further strengthen our collateral position and result in a positive future for the business.

3. List all changes being made to the original Loan Agreement. Is there a cost to these changes?

The changes in this loan amendment include a reduction in the interest rate from 9% to 6% and an extension of the current loan term from Feb. 2012 to Feb. 2025. The term extension was intended to correspond with the Port lease extension. There may be some additional minor adjustments as we finalize a workable amortization schedule. However, these will be done within the above stated terms.

There are no additional costs to MOCD for making the proposed changes to the loan agreement. Under these revised terms MOCD would expect to recover both the loan principal balance plus interest over the life of the loan.

4. Why did the MOCD Section 108 Loan to Bundox not require Board of Supervisors approval?

MOCD did receive Board of Supervisors approval in Resolution 67-96 (File No. 68-95-5.1) to accept and expend Section 108 Revolving Loan Guarantee Funds for this program in accordance with the federal rules and regulations of the program. In doing so the Mayor's office accepted the administrative responsibility for the Section 108 Revolving Loan Guarantee funds in accordance with federal rules and regulations. The administration of the Section 108 Loan Program by the Mayor's Office includes loan application review, loan underwriting, loan amendments or workouts, loan servicing, loan collections and all other aspects of revolving loan fund administration.

5. How much has been paid by Bundox, Restaurant, Inc. to date?

- I am revising the expenditures breakdown from my previous memo, loan funds were used for the following:

Leasehold improvements	$ 2,489,600.73
Furniture, Fixtures & Equipment	$ 451,126.91
Interest Reserve	$ 146,250.00
Working Capital	$ 163,022.36
	$ 3,250,000.00

- To see how much Bundox, Inc. had paid to-date and to see the fiscal impact to MOCD & City see table below:

MOCD: BUNDOX, INC. LOAN TERM COMPARISON

	Original Loan Terms	Proposed Revised Loan Terms
Loan Amount	$3,250,000.00	(See **Note below) $3,283,597.77
Interest Rate	9 percent	6 percent
Monthly Payment	$31,161.00	$22,429.42
Term	Yrs. 1996 - 2012	Yrs. 2003 - 2025
Interest Paid To-date	$1,248,787.46	$1,248,787.46
Principal Paid To-date	$317,579.49	$317,579.49
Sub-total Paid To-date	$1,566,366.95	$1,566,366.95
Projected P&I over the life of the loan	$6,356,869.88 (Already includes P&I Paid To-date)	$5,921,366.19 (Plus P & I Paid To-date) $1,566,366.95
Total P & I over loan term	$6,356,869.88	$7,487,733.14

****Note: The revised loan amount of $ 3,283,597.77 above includes the following:**

Current Loan Principle Balance	$2,932,420.49
Past Due Interest	$351.177.28
Revised Loan Principle Balance	$3,283,597.77

A copy of the proposed loan amendment is attached under separate cover.

Cc: Roger Sanders, Director

John C. Clifford, MAI

CLIFFORD ASSOCIATES
REAL ESTATE APPRAISAL • ADVISORY • ARBITRATION

May 5, 2003

Ms. Carol Anderson
Assistant Deputy Director
Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111

RE: **Waterfront Restaurant**
Pier 7 ½, The Embarcadero
San Francisco, CA

As you requested I am reporting my preliminary findings regarding current market rental trends for large competing restaurant properties in San Francisco. It is understood this information will be used to evaluate the terms of a proposed lease modification for the Waterfront Restaurant.

WEAK MARKET CONDITIONS

The operating market for restaurant properties in San Francisco is extremely competitive and can only be characterized as in a "survivor" mode. This is due to the entrenched economic slowdown in the local and regional economy, now worsened by the onset of war and the outbreak of SARS. Restaurateurs report the current outlook makes the aftermath of the 1989 Loma Prieta earthquake look good. Consequently, a period of extreme inactivity is noted for new restaurants with the market dominated by restaurant failures and closings. These would include the Cypress Club, The Black Cat, and several others, including the discontinuation of the use of the second floor of the subject restaurant.

Prevailing market conditions impact all restaurants in San Francisco, but none more severely than the large facilities such as the subject. Many large restaurants like the subject depend on tourism and convention activity, which continues to be at historic lows, and with no end in sight. The subject represents one of the larger restaurant facilities in San Francisco. In addition, the subject location on the Embarcadero is appealing, but it is somewhat disconnected from CBD business patronage, the second tier of revenue source for the subject. Thus, the project relies primarily on tourism for its market share. Few new large restaurants have opened during the past 24 months, with most opening prior to, or at the onset of the unprecedented 1998-2000 economic cycle. In some cases these facilities were supported by the opening of the new baseball stadium, which at one point the City implemented a moratorium on new restaurants in its vicinity to avoid market saturation. In any event the indicated rental rates for these facilities are deemed irrelevant since they pre-date the current economic cycle and weakened market conditions.

FUNCTIONAL OBSOLESCENCE

At nearly 10,000 SF on two levels, the appraiser concludes that the marketability of the subject restaurant is virtually non-existent, or extremely limited. There are simply very few restaurant operators interested in assuming the risk associated with operating such a large facility. The only method to

attract a tenant to the subject location, or any location that features a project of this size is to offer a fail-safe rental obligation, at least for a period to achieve market penetration and to insure stable operations.

Among the large facilities which have been available, the appraiser notes the following.

Recent activity at the newly rehabilitated Ferry Building also confirms this trend. The initial marketing plan for the prime public and restaurant facilities envisioned use of up to 7,500 SF. However, only three small restaurant leases have been executed with net rental rates ranging from $2/SF/MO to $3/SF/MO. These deals require extensive owner paid tenant improvement (TI) allowances from $50/SF - $100/SF, and offer discounted rent for years 1 and 2 in a 10 year term. This location also distinguishes itself from the subject location as it benefits from voluminous commuter traffic using Ferry service to the North and East Bay.

The appraiser is aware of a reported proposal to open a relatively large restaurant in the Jackson Square district. This is a popular location more proximate to serve business clientele, but includes lower level and main floor premises. It benefits from a good location adjacent to a relatively successful large restaurant, Kokaari. However, the premises at 244 Jackson have been available for more than two years. The specific terms of the transaction could not be disclosed at this stage of negotiations, but it was noted that extensive tenant improvement allowances would be required. The broker handling this property, who is considered a specialist in restaurant properties in San Francisco, confirmed the subject size and location would have limited appeal under current and projected market conditions, unless attractive economic terms are offered.

The required rental attraction is demonstrated by another pending transaction at Pier 33 where Lapis once operated. It was reported that the lease has been assigned to the operator of Butterfly, who will relocated from the Inner Mission district. Butterfly has agreed to assume a 9.5 year lease term beginning this month. The premises contain 6,772 SF and requires a rental payment of $7,000/mo, or $1.03/SF/MO. The base rent is measured against a 7% percentage rent during years 3 – 9.5, with a reduced percentage rent of 5% in year 1 and 6% in year 2. The premises are to be conveyed in their as-is condition.

At Rincon Park, a well known restaurateur, Reed Heron, has elected to sublease a location which can support a 16,556 SF facility. The offering is to provide shell completion at $3/SF/MO. The broker indicates there has been no interest, despite its location opposite an F-line stop on the Embarcadero near the stadium.

One of the larger and more recent transactions is the Slanted Door restaurant at 100 Brannan Street near a successful new condominium project and the stadium. It contains 5,200 SF and was leased in 2001 requiring a net rent of $1.92/SF/MO which remains flat and requires no percentage rent. Further, the owner was required to provide turnkey improvements.

Several of these lease transactions are summarized on Table 1. The recent activity suggests that base rent levels for small restaurants range up to $3/SF/MO with larger facilities renting between $1.03/SF/MO to $2.50/SF/MO. Typically the base rent is escalated each year by CPI. In most cases base rent is measured against a percentage rent of 6% to 7%. In some cases, rent paid by long term operators is structured on a percentage rent only requirement. These reflects rates from 6.5% to 8.5% for food and beverage, respectively. Again, it is noted that even some of these percentage benchmarks have declined or disappeared such as at the Ferry Building and the Slanted Door.

Other than a pending large restaurant transaction in Jackson Square, and the Pier 33 lease, the appraiser is not aware of any facilities that have been recently leased that are similar in size to the subject. The subject includes a total enclosed square footage is 9,189 SF. This is divided into the café utilizing the first floor and mezzanine only which contains 6,219 SF. The second floor contains 2,970 SF and until January 2001 was operated as a full service formal dining restaurant. Due to declining patronage, the second floor restaurant was closed in January 2001. The failure of this upper floor facility is also attributed to the requirement to operate separate kitchens and wait staffs on each level of the Waterfront, rather than to realize some economies sometimes achieved at other large facilities. The inability of the current and long-term operator of the subject to continue full operations are a testament to severe market conditions, and the super-adequacy of the Waterfront facility. In a sense, the design of the two story facility is advantageous to facilitate separate closure of the upper floor area.

It is understood the proposed Waterfront lease modification requires a base rent of $10,000/mo. This requirement reflects a rate of $1.09/SF/mo, based on the total enclosed area of 9,189 SF. This requirement reflects a rate of $1.61/SF/mo, based on the effective area of operation totaling 6,219 SF. It is also noted the modification provides no tenant improvement allowance, and represents a true savings and income benefit to the owner. For every $10/SF of TI allowance that an owner can avoid, an effective rent reduction of $.11/SF/MO can be offered for a 10 year lease. This is noteworthy in comparison to other lease transactions where the trend requires significant owner TI contributions.

In the final analysis, the appraiser concludes the subject has limited marketability and exhibits functional obsolescence due to its size and design. This is also indicated by analyzing restaurant gross sales volume.

DECLINING SALES VOLUME

The best evidence of limited market demand can be illustrated by examining declining restaurant sales volume at the subject and other nearby facilities, both large and small. These are summarized on Table 2.

The downturn in the subject's recent sales volume activity is revealing, and suggests the facility represents an over-improvement in terms of size. During the height of the economic cycle, the subject achieved high sales volume levels of nearly $7 million in 1998 and 1999, and before new restaurant operators rushed in to tap excess profits. Subsequently ruinous competition emerged which has combined with an economic slump to erode profitability and sustainability for many operators. The subject's declining sales volume to $3.7 in fiscal 2001-02 indicates an overall rate of $407/SF based on the entire square footage of 9,189 SF, and $601/SF based on the first floor and mezzanine only which contains 6,219 SF. The latter figure is reported following the operators decision to discontinue operations on the second floor containing 2,970 SF in January 2001. During the 9-month 2002-03 fiscal period, declining sales volume has continued, and recently reflects a sales volume of $447/SF based on the effective useable area of 6,219 SF. This rate, based on the smaller premises (6,219 SF) is bracketed by the sales performance achieved at other nearby popular restaurant properties, i.e. Fog City Diner reporting a recent sales volume of $440-$460/SF/YR, and Pier 23 at $500/SF/YR. These facilities more closely compare in terms of size to the subject's consolidated operations.

WATERFRONT LEASE

It is understood the parties are considering a lease modification under current market conditions The history of the current lease terms is convoluted, due to the long term historic occupancy at this location, the operator's extensive and excellent quality reconstruction, including the addition of public access to the waterfront, and the structure of base and percentage rent which provides a rent credit to the operator to partly offset construction costs. Further consideration is given to the remaining term of the

current lease, and its impact on the marketability of the leasehold estate, as well as the reversion value of the premises to the landlord. This is an important factor in evaluating the proposed lease modification. Consequently, it is difficult to evaluate any single factor, such as the base rental rate, at any one particular point in time. Rather the entire context of the lease terms must be considered.

Under the existing lease terms which extend until 2016, a current base rent of $21,785/mo is required, which is compared to a 7% percentage. However, rent credits are provided which matured in 2008. The base rent was to increase by CPI in 3 year intervals. The appraiser analyzed the contract lease terms in 2001 and concluded the contract rent was above market and resulted in a negative leasehold interest in the project. This is certainly true at this point, where at face value, the current base rent of $21,785/mo is $2.37/SF/MO based on the total enclosed area, and $3.50/SF/MO based on the area now in operation. Overall, this rate appears high by comparison to other large and small restaurants. In terms of sales volume, using a 7% percentage rent, the current rent requires a breakeven volume of $406/SF/YR based on the total enclosed area, and $600/SF/YR based on the area now in operation. The conundrum is that the functional appeal for the total enclosed area is obsolete, as it is too large and inefficient to operate on two levels to achieve a sales volume at a level that is consistent with smaller restaurants. Conversely, the competitive demand is too weak to achieve a $600/SF/YR sales volume based on the consolidated area now in operation.

A proposed modification to require a base rent of $10,000/mo is under consideration. In addition, the lease is extended until 2025, and the CPI increase is implemented annually after 2007. The percentage rent is reduced to 6%, but this rent is deferred until 2007 and only payable to the city if the current operator sells his leasehold interest and there are proceeds available after retiring existing mortgage debt. The base rent requirement reflects a rate of $1.09/SF/mo, based on the total enclosed area, and $1.61/SF/mo, based on the effective area of operation totaling 6,219 SF. One advantageous element to this transaction is that the landlord is able to avoid TI expenditures, which has become a costly and prevailing lease consideration, under current market conditions. Its omission represents a true savings and income benefit to the owner as noted above. The recent lease to Butterfly at Pier 33 suggests the nominal base rent terms of the subject lease modification are consistent with economic terms that were sufficient to attract a knowledgeable and experienced restaurateur willing to enter a risky and competitive operating environment.

However, the modification to defer additional rent under the percentage clause until 2007 and require payment only if the business is sold is an advantage to the tenant, particularly if the business environment rebounds and there is support to re-open the upper floor restaurant premises. Reduction in rent during the early period of a lease terms is not uncommon and has also been negotiated elsewhere. However, the deferral of percentage rent for a period of 4 years is atypical, unless one considers that it may take up to 2 years or more to find a replacement tenant like at 244 Jackson noted above, and then offer reduced rent to a new tenant during the early term. Nonetheless, the base rent of $10,000/mo reflects only 3.2% of the reported gross sales volume of $3.7 million as of fiscal year 2001-02. Using the 6% percentage rate under the terms of the modified lease, the total rent would approximate $18,700/mo. Thus, a deficit rent of $8,700/mo would accrue over the next approximate 48 months, totaling $417,000. This is advantageous to the tenant when most other operators are willing to pay 5% to 7% of gross sales volume. However, these operators have not spent extensive capital resources to improve their facilities like the subject operator. These same funds are the target of a rent credit and the structure of the modified lease may be an attempt to achieve parity with the recent over-improvement constructed by the current tenant, and which ultimately reverts to the Port in 2025 or before if there is a default on the lease.

CONCLUSION
There appears to be mutual benefits to both parties based on the proposed lease modification. The merits of the discounted rent to the tenant have been identified above. For the owner, operations continue during a time when locating a new tenant may take several years, and there is no assurance another operator could perform at any higher level to generate greater rent to the landlord, particularly if new tenant improvements are exacted from the landlord. Further, there is at least some potential the Port could realize payment of deferred percentage rent if the project is sold. This potential is increased by the extension of the lease until 2025. The modification appears to reflect a reasonable attempt by both parties to help each survive the current economic downturn until more robust economic returns can be achieved.

Please feel free to contact me if you have any questions regarding these comments.

Respectfully submitted,

CLIFFORD ASSOCIATES

John C. Clifford, MAI

IMPROVED RESTAURANT LEASES **TABLE 1**

PROJECT NAME	PARCEL SF	BLDG SIZE SF	Start Date	Term	Base Rent $/sf/mo	% Rent Food	% Rent Bevg	Owner TI's
Gordon Biersch		13,934	10/19/91	10 Yrs +(5) 5 yr opt	$2.13	7.0%	7.0%	
Boulevard	6,302	9,748	9/29/93	10 Yrs +(3) 5 yr opt	$1.92	7%	7%	
Boulevard			2003	Renewal	$2.50	5 % - 6%		
One Market			1992	10 Yrs		6.5%		
Sinbad's			4/1/96			6.5%	8.5%	
Fisherman's Wharf Restaurants			2/21/96			6.5%	8.5%	
Rincon		16,556	Available		$3.00	7.0%	7.0%	$50 - $100
Pier 33		3,538	11/1/97	9 Yrs.	$2.80	7.0%	7.0%	
Kokaari	2 levels	8000	1/1/99	10 Yrs	$3.00			
Slanted Door		5200	2/1/01	10 yrs	$1.92			
Ferry Bulding		Various up to 3,000 SF	2002	10 yrs	$2.00 to $3.00	5 % - 6%		$50 - $100
1200 9th St.		6000	Aug-00	5 yrs	$3.75			$50
Beach Chalet		6,032	12/31/98	20 Yrs.	$0.86	6.0%	7.5%	

TABLE 2

RESTAURANT SALES VOLUME

PROJECT NAME	BLDG SIZE SF	95 Sales	96 Sales	97 Sales	98	99	00	01	'02 thru 3 qts
Waterfront	9189		$3,084,564	$2,814,357	$6,963,006 expansion	$6,846,015	$8,066,943	$3,740,714 closed 2nd flooor	$2,781,949
	Sales $/SF/YR				$758	$745	$860	(1) from 9189 SF to 6219 SF $407 $601 (1)	$447 (1)
Fog City Diner	7627				$3,895,358	$3,965,900	$3,935,539	$3,508,002	$2,523,109
	Sales $/SF/YR				$511	$520	$516	$460	$441
Pier 23	4835				$2,290,558	$2,441,733	$2,865,210	$2,739,657	$1,825,607
	Sales $/SF/YR				$474	$505	$593	$567	$503
Gordon Biersch	13,934	$5,384,803 $386	$5,642,445 $405	N/A					
Boulevard	9,748	$6,587,369	$7,382,477	$7,913,369 $812					

2.1 – THE NATIONAL RECESSION

The American economy slid into recession in 2001 after a record-long expansion. The prosperity of the 1990s was ignited in 1993 by the Clinton tax reform that eliminated the structural federal deficit that had plagued the US economy since it was created by the Reagan tax cuts in the early 1980s. Once underway, the expansion was fueled by sustained productivity growth arising from convergence of investments in technology, corporate restructuring to compete successfully in the global economy, efficiencies from widespread use of the Internet, and the rising skills level of American workers.

The year 2001 began badly with the newly elected president dampening business confidence with talk of recession to garner support for the tax cut he signed into law on June 7. Short-term interest rates fell in response to the prospect of more short-term liquidity from tax rebates. However, when other likely effects of the tax cut, such as re-introduction of the structural deficit and reduction in the progressivity of the federal tax structure were considered, the market did not reduce long term rates. It was clear to most analysts the federal government would be forced to borrow heavily to cover the deficits created by the tax cut, even before the massive inflation of the defense budget following the September 11 terrorist attacks.

Business capital spending, especially purchases of high-tech equipment and software, plunged in the second quarter. Substantial investments in this technology to address potential Y2K problems appears to have borrowed from future orders, and collapse and retrenchment in the dot.com industry further reduced demand.

The falling demand initially hit high-tech equipment manufacturers and software producers. However, malaise quickly spread to share prices of other high-tech companies. The speculative bubble that had grown to alarming proportions on the NASDAQ burst, sending share prices plunging on all of America's stock exchanges.

As the US economy slowed, major foreign markets for American products contracted, severely impacting the export-driven Bay Area economy.

The September 11 terrorist attacks on New York's World Trade Center and the Pentagon, and the Administration's response to these attacks, severely disrupted US air travel further exacerbating the recession. The effects of reduced air travel were particularly severe for California and the Bay Area because of the prominent role of visitor-dependent business in their economic base. Tourism has come back slowly and, at year-end 2001, still was well below year-ago levels.

For the nation as a whole, the recession has been more shallow, and perhaps less protracted than initially feared. Consumer spending has held up well despite rising unemployment, the NASDAQ losing nearly 70% of its value between February 2000 and

September 2001, and the plunge in bonus and stock option income in 2001 more than offsetting the increase in wage and salary income from all other sources.

Several explanations have been suggested for this seemingly anomalous consumer behavior. Although ownership of common stocks became more widespread in the bull market of the 1990s, the lion's share of stock market equity still is concentrated in the hands of institutions and wealthy individuals. Most Americans have the bulk of their wealth invested in residential property, rather than in stocks, and home prices held up well last year. Generous factory incentives in the fall pushed sales of motor vehicles to record levels and gave a major boost to consumer spending. Finally, spending rather than saving in times of economic insecurity that normally is seen as imprudent behavior has been touted as patriotism in the current circumstances.

The recession was cushioned by more than **$122 billion** of deficit-financed stimulus from the federal government. The Treasury borrowed **$40 billion** to pay advances on anticipated taxpayer savings from the tax cut. Congress approved **$40 billion** not in the budget to bail out the airlines, assist New York City, and improve national security, and another **$42 billion** for the largest increase in military spending in two decades. It appears that budgeted spending in several other departments of the federal government has accelerated, possibly in anticipation of a ballooning federal deficit that may curtail such spending in the months ahead.

The current loose consensus among economists is for a national recovery beginning by mid-year 2002 to gather steam and put the economy on reasonably firm footing by the end of the year. The strength of the recovery hinges primarily on the strength of the rebound in capital spending in which decline precipitated the recession. The major risks to the consensus forecast are that the high-tech business recession will be deeper and more protracted than many forecasters expect, consumer confidence will flag as unemployment continues to rise as it is expected to do well into the summer, or that another September 11 type event may again destabilize the economy.

2.2 – IMPACT ON SAN FRANCISCO

Overall, the California economy performed better than the nation as a whole in 2001, with most of the pain felt in the Bay Area where the majority of the State's job losses were concentrated. The unemployment rate in Santa Clara County, host to most of the State's high-tech electronics firms, rose from 1.5% to 6.6%. The unemployment rate in San Francisco, center of the dot.com boom and an economy that relies heavily on the visitor industry, rose from 2.7% to 6.1%.

Municipal tax collections are good quantitative measures of local economic performance, because they reflect many different types of economic activity and the natural tension between taxpayer and tax collector helps to assure accurate data. The San Francisco Controller's mid-year status report on the city's General Fund resources summarized in *Table 2.1* paints a stark picture of the depth of the local recession. Data reported for fiscal

years ending June 1 in 2001 and 2002 show absolute declines in tax revenues, not just a leveling of growth.

Total *General Fund Resources* are forecast to be off more than $60 million or nearly 3% in the current fiscal year. Most of the damage is from a $64 million, 5.4% drop in tax revenue, and a nearly $29 million, 19% drop in combined transfers from Hetch Hetchy and San Francisco International Airport. What would otherwise be a $93 million shortfall in total *General Fund Resources* is cushioned by a $26 million increase in *Intergovernmental Revenues*, mainly subventions from the State of California, and a nearly $7 million net increase in *Other Internal Revenues*. The main components of *Other Internal Revenues* are an $18 million increase in user charges for *Medicare, Medical* and other *Health Services*, offset in part by a $10 million drop in *Interest and Investment Income*.

Table 2.1
Change in San Francisco General Fund Resources
FY 2001 to FY 2002

($000,000)	FY 2001	FY 2002	Change Amount	Change Percent
PROPERTY TAXES	461.9	474.0	12.0	2.6%
BUSINESS TAXES	277.1	271.7	-5.4	-2.0%
Business Registration Tax	10.0	6.4	-3.6	-35.7%
Payroll Tax	267.1	265.2	-1.9	-.07%
OTHER LOCAL TAXES	451.4	380.3	-71.1	-15.8%
Sales Tax	143.8	129.9	-13.9	-9.6%
Hotel Room Tax	131.4	94.8	-36.6	-27.8%
Utility Users Tax	77.2	76.9	-0.3	-0.4%
Parking Tax	33.8	33.0	-0.8	-2.4%
Real Property Transfer Tax	62.3	43.0	-19.3	-31.0%
Admission Tax	2.9	2.6	-0.3	-8.9%
TOTAL TAXES	1,190.4	1,126.0	-64.4	-5.4%
OTHER INTERNAL REVENUES	185.5	192.4	6.9	3.7%
INTERGOVERNMENTAL REVENUES	636.4	662.1	25.7	4.0%
TOTAL REVENUES	2,012.3	1,980.5	-31.8	-1.6%
TRANSFERS INTO GENERAL FUND	149.1	120.3	-28.8	-19.3%
Airport	26.2	21.7	-4.5	-17.0%
Hetch Hetchy	29.9	0.0	-29.9	-100.0%
Other Transfers	93.1	98.6	5.5	6.0%
TOTAL GENERAL FUND RESOURCES	2,161.4	2,100.8	-60.6	-2.8%

SOURCE: *FY 2001-02 Six-Month Budget Status Report*. Controller, City & County of San Francisco. February 8, 2002.

More instructive for our purposes is what has happened to collections of specific taxes. The $37 million, 28% plunge in *Hotel Room Tax* revenue is eloquent testimony to the current depressed state of the visitor industry. The $14 million, 10% drop in *Sales Tax*

revenue also reflects the precipitous drop in the number of visitors to San Francisco. *Parking Tax* revenues are off 2.4% due to lower usage, and revenue from city-owned garages located mainly in the downtown area are off 10.5% due to lower usage and lost revenue due to current reconstruction work at the Union Square Garage.

The 36% drop in *Business Registration Tax* revenue and 31% drop in *Real Property Transfer Tax* revenue, reflect the generally depressed nature of business in the city.

The $37 million, 28% drop in projected FY 2002 *Hotel Room Tax* revenue from the FY 2001 level, is nearly $47 million lower that the amount the city had budgeted for this source of revenue. The shortfall is the result of sharply lower hotel occupancy and significantly lower average room rates as shown in *Table 2.2.* Occupancy has been down as much as 33% in recent months and average room rates off as much as 16%. Effects of the September 11 terrorist attacks clearly are evident in data for September and months in the final quarter of the year. A disaster in New York City quickly became a disaster for San Francisco's hospitality industry. Room rates were already softening from the recession, but after 9-11 hotels discounted more aggressively in an attempt fill the plethora of vacant rooms.

Table 2.2
San Francisco Hotel Room Rates & Occupancy Rates
Annual 1995 – 2001 & Monthly 2001

Month 2001	Av. Daily Room Rate	Overage Occupancy	Year	Av. Daily Room Rate	Overage Occupancy
January	$173	65%	2001	$168	68%
February	$182	71%	2000	$174	82%
March	$180	73%	1999	$155	80%
April	$172	69%	1998	$146	81%
May	$196	76%	1997	$134	81%
June	$175	80%	1996	$122	80%
July	$164	76%	1995	$107	74%
August	$156	81%			
September	$151	58%			
October	$165	61%			
November	$148	56%			
December	$132	52%			

SOURCE: San Francisco Convention and Visitors Bureau

The *Hotel Room Tax* has been one of the city's most reliable and fastest growing revenue sources, increasing 9.4% a year on average over the last 20 years from $33 million in FY 1981 to $195 million in FY 2001. The tax increased 13.6% a year on average during five-year dot.com boom preceding FY 2001. The plunge in *Hotel Tax* revenues is a serious matter, especially for numerous nonprofit arts groups that rely on grant funding from the *Hotel Tax Fund*, and the *Convention and Visitors Bureau* that relies on the tax for half its marketing budget.

2.3 – IMPACT ON RESTAURANTS

The impact of the deep recession that has descended on San Francisco in 2001 is reflected in restaurant employment, restaurant income, and the number of restaurants. Information on these measures for this report was drawn from the California Employment Development Department (EDD), a private recruitment service, the San Francisco City Government tax collection and licensing agencies, and a survey of San Francisco table service restaurants.

2.3.1 – Restaurant Employment

The California Employment Development Department (EDD) data show a half percent decline in *eating and drinking place* employment in *the San Francisco Metropolitan Statistical Area* (MSA) [1] from 72,900 in 2000 to 72,500 in 2001. *EDD* has yet to release 2001 data for San Francisco County, but projecting the MSA results to the county suggests restaurant industry employment dropped from 42,700 in 2000 to about 42, 485 in 2001. Comparable data in this EDD series increased on average 4.6% a year in each of the preceding five years.

The adverse effects of the recession and September 11 terrorist attacks on San Francisco and Bay Area restaurants were reflected in a sharp drop in recruitment advertising for restaurant jobs, and a sharp rise in the number of applicants seeking such jobs. Data on these difficult to quantify trends for the second half of 2001 were contributed to the current report by John and Karen Foley, two veteran Bay Area restaurant owners who operate online recruitment and applicant web sites in ten major hospitality markets in the United States. Their sites, ***needwaitstaff.com*** and ***needkitchenstaff.com***, at year-end 2001 were assisting 145 Bay Area employers and 2,244 local applicants.

Employers post their job openings on the two web sites and remove a posting when the job is filled. Job applicants post their full resume at one of the two sites and answer specific job related questions prior to gaining access to review employer job postings. Typically applicants request their resumes be removed from the site when they find employment. The Bay Area sites' applicant pool is split about 14% for kitchen staff and 86% for wait staff.

Restaurant advertising and recruitment for applicants from June 2001 through September 11, 2001 were relatively constant in the Bay Area, though less robust than in 2000. However, post-September 11, with air passenger traffic and hotel occupancy falling like a rock, and restaurant patronage off sharply, recruitment advertising at the two web sites decreased by more than 75%.

As recruitment imploded, the number of applicants seeking work exploded, rising nearly 50% in six month. An accompanying change was that far fewer successful applicants requested their resumes be removed from the web sites. Instead, more and more applicants adjusted their resume page to reflect the number of hours they still had

[1] The San Francisco Metropolitan Statistical Area includes San Francisco, San Mateo and Marin Counties.

available for additional part-time and on-call jobs. *Table 2.3* exhibits the monthly pattern of applicants during the last six months of 2001.

Table 2.3
Percent Decrease in Applicants for Bay Area Restaurant Jobs
needwaitstaff.com & needkitchenstaff.com Web Sites
June to December, 2001

	June	July	Aug	Sept	Oct	Nov	Dec
needwaitstaff.com	1,396	1,516	1,572	1,708	1,920	1,998	2,018
needkitchenstaff.com	104	106	114	125	174	183	226
Total	1,500	1,622	1,686	1,833	2,094	2,181	2,244
Monthly Increase		8.1%	3.9%	8.7%	14.2%	4.2%	2.9%
6-Month Increase	744 applicants 50 percent						

SOURCE: John Foley, CEO, neednetstuff.inc

Among the ten US hospitality markets served by the Foley web sites, San Francisco Bay Area applicant growth in the second half of 2001 was surpassed only by the New York/New Jersey market. Although the ***needwaitstaff.com*** and ***needkitchenstaff.com*** web sites do not encompass the entire local restaurant employment market, their experience is a good indicator of recent conditions in that market.

In current market conditions, many more workers are looking for restaurant industry jobs now than a year ago, and many more workers are looking for jobs than there are jobs looking for them. This section of this report discusses three deleterious effects of the current recession on the San Francisco restaurant industry. The first of these is that the recession has created significant employment problems for industry employees.

2.3.2 – Restaurant Income

People who run restaurants have an exceptionally strong grasp of where money comes from. You buy food, you sell food, and hopefully you make enough money on the difference to pay for all of your other business expenses (payroll, rent, local taxes, insurance, napkins, etc.). If there's anything left at the end of the day, that's income – that's where money comes from.

The second deleterious effect of the recession is that restaurant income on average plunged more than 40% in 2001. *Table 2.4* summarizes the *median Income & Expense Statement* values for table service restaurants in the restaurant survey conducted for this report.

Table 2.4
Median Change in Income & Operating Expenses
Total & Per Seat
2000 to 2001

	Percent Change	Percent Change Per Seat
Sales	- 4.2 %	- 4.5 %
Cost of Sales	- 6.2 %	- 6.8 %
GROSS MARGIN ON SALES	-3.0 %	- 3.2 %
Operating Expenses	- 0.2 %	- 0.4 %
INCOME before INCOME TAXES	- 40.5 %	- 32.4 %

Source: *San Francisco Restaurant Survey 2002*, Golden Gate Restaurant Association

Among survey participants, a 4% drop in *Sales*, and 6% drop in the *Cost of Sales*, produced a 3% drop in *Gross Margin on Sales*. *Operating Expenses* were flat, dipping just *0.2%*, and so these expenses took such a big bite out of *Gross Margin*, they drove *Income before Income Taxes* down 40%.

2.3.3 – Number of Restaurants

The third deleterious effect of the recession on the San Francisco restaurant industry is that is has put an unprecedented number of restaurants out of business. Data in *Table 2.5*, provided by San Francisco's *Department of Public Health* from the *Tax Collector*'s restaurant license database, show the city lost nearly 7% of its restaurants in the six months from June 1 to December 1, 2001.

Table 2.5
San Francisco Restaurants & Bars
Number of Establishments
June 1, 2001 & December 1, 2001

Type License	Type of Establishment	June 1, 2001	Dec. 1, 2001	Absolute Change	Percent Change
H24	Restaurants < 1,000 sq ft	1,313	1,227	- 86	- 6.5 %
H25	Restaurants 1,000 to 2,000 sq ft	1,202	1,142	- 60	- 5.0 %
H26	Restaurants > 2,000 sq ft	1,043	968	- 75	- 7.2 %
	Table Service Restaurants	3,558	3,337	- 221	- 6.2 %
H28	Take-out Restaurants	630	565	- 65	- 10.3 %
H29	Fast Food Restaurants	46	44	- 2	-4.3 %
	All Restaurants	4,234	3,946	- 228	- 6.8 %
H27	Bars, Tavern & Lounges	397	387	- 10	- 2.5 %

SOURCE: San Francisco Department of Public Health, Environmental Health Section

An official who deals with these data at the *Health Department* observed the number of active restaurant licenses is a very stable statistic in San Francisco and a drop of the magnitude shown in *Table 2.5* has not occurred before. Often, when one restaurant goes out of business it quickly is replaced by another restaurant, but these numbers document a very large *net* reduction in the *total* number of restaurants.

The *Tax Collector* retains all records of current and past restaurant licenses in a database that distinguishes between active and inactive tax accounts. Maintaining this database involves activating new accounts and deactivating accounts when annual licenses are surrendered or allowed to lapse. *Table 2.6* summarizes the number of accounts opened and closed each year from 1998 forward, based on opening and closing dates shown in the license database. Often there is a lag between a restaurant closing and the deactivation of its license, and several records in the database have empty date fields suggesting gaps in the maintenance of these data. Nevertheless, *Table 2.6.* reinforces the message from *Table 2.5*, namely a large net number of restaurants closed in 2001, in this telling, 154, rather than the probably more accurate 228 in *Table 2.5*.

The 2002 data in *Table 2.6* cover only the first 14 days of January because the *Tax Collector* ran the database provided for this report on January 14. However, even in that brief period seven more restaurants bit the dust.

Table 2.6
San Francisco Restaurant Tax Accounts
Number Opened, Closed & Net Change
1997 - 2002

Year	Accounts Opened	Accounts Closed	Net Change
2002 [1]	1	7	- 6
2001	439	593	- 154
2000	677	713	- 36
1999	625	570	55
1998	681	724	- 43
1997	581	397	184

SOURCE: San Francisco Tax Collector
1. Data for 2002 are as of January 14, 2002

MEMORANDUM

TO: Harvey Rose, Budget Analyst

FROM: Kenneth E. Winters, Director of Real Estate, Port of San Francisco

RE: Waterfront Restaurant Lease Amendment Proposal

DATE: May 13, 2003

Pursuant to our discussion, this memorandum is provided as a reconciliation and summary of the Clifford Associates report of May 5, 2003.

The overall rent which a landlord expects to receive is based on a percent of a restaurant's gross sales. In the case of the proposed Bundox/Waterfront Restaurant lease, the overall rent which the Port expects to receive is based on 6% of Waterfront's gross sales annually. The conclusion for the Bundox lease restructure must be compared to other restaurants' gross sales and the resulting overall rent/s.f. in the market comparables presented earlier through the Clifford Associates report. In addition, we take into account that the proposed minimum rental rate is in effect a discounted rate, due to the significant and unusual level of capital improvements which Bundox funded on its own behalf as well as that of the Port. Further, the size of Bundox/Waterfront at approximately 10,000 s.f. is obsolete under current economic and market conditions which is suggestive of a rent discount.

Though Waterfront Restaurant's proposed minimum rental rate is approximately $1.09/s.f., based on restaurant premises of 9,189 s.f., or a total of $120,000 per year, when viewed as a function of 6% of all gross sales, the actual rent per square foot paid to the Port is projected to be in fact much more, depending on the level of sales, as follows.

<u>Waterfront Restaurant</u>

Projected Gross Sales	$ 4,000,000	$ 5,000,000	$ 6,000,000
% Rent, 6%, Due to the Port	$ 240,000	$ 300,000	$ 360,000
Rent/Month	$ 20,000	$ 25,000	$ 30,000
Est. Rent/s.f./Month	$ 2.17	$ 2.72	$ 3.26

Market Comparable Summary

Utilizing the comparables from Table 2 provided by Clifford Associates, further breakdown in a similar fashion reveals the following Gross Sales and resulting Rent per Square Foot per Month comparisons for recent years.

	1999	2000	2001	2002
Fog City Diner	$ 3,965,900	$ 3,935,539	$ 3,506,002	$ 3,453,935
% Rent, 6.75%	$ 2.92/s.f.	$ 2.90/s.f.	$ 2.58/s.f.	$ 2.54/s.f.
Pier 23 Café	$ 2,441,733	$ 2,865,210	$ 2,739,657	$ 2,818,999
% Rent, 7%	$ 2.94/s.f.	$ 3.45/s.f.	$ 3.30/s.f.	$ 3.40/s.f.

Also noted in Clifford's report is Boulevard Restaurant which totals 9,748 s.f., and reportedly averages annual gross sales of $8 million. Until recently their percentage rent was 7% which resulted in an overall rent of $4.78/s.f./month. Clifford reports that Boulevard recently renewed its lease reducing the percentage rent from 7% to between 5%-6%. Assuming the percentage rent to now be 5.5%, the resulting overall rent based on $8 million in gross sales would be $ 3.76/s.f./mo.

Market Deal Adjustment of Minimum Rent

The Waterfront Restaurant invested over $3.2 million to improve the Waterfront Restaurant and the public access areas for the Port. The Port agreed to contribute 50% of restaurant improvements up to $1 million, and 50% of public access improvements up to $700,000 through rent credits returned to Waterfront after achieving certain performance levels. The Bundox/Waterfront Restaurant lease structure is atypical due to the excessive burden placed on it with regard to all capital improvements (BCDC/public access improvements and tenant improvements) in addition to requiring a full market rent.

In a typical real estate lease transaction, a tenant would never be required to participate in public/capital improvements. As such, the landlord should have assumed responsibility for 100% of the public access space improvements. A landlord would have also contributed up to 50% of tenant improvements. Therefore, the Waterfront deal based on a typical lease structure would have provided for a Port contribution of $2.4 million, or approx. $261/s.f., (based on 9,189 s.f.) with Waterfront providing $800,000, or approx. $87/s.f. Utilizing Clifford's calculation described in his memo (for every $10/s.f. a landlord avoids in tenant improvement allowance, an effective rent rate reduction of $.11/s.f./mo is offered for a 10 year lease) the equivalent rent reduction would be as follows: $261/s.f. divided by $10/s.f. equals $26.10 divided by 12 months equals $2.17/s.f.. Because the lease is 20 years, the reduced rent number is divided by 2 and results in a theoretical rent reduction of $1.09/s.f. When added to the Waterfront minimum rent in the proposed lease of $1.09/s.f., the equivalent market rental rate equals $2.18/s.f., with landlord capital contribution.

Conclusion

Therefore, though the proposed Waterfront minimum rent of $1.09/s.f., appears to be at the low end of the minimum rent range of comparable leases, it is the Port's conclusion that the equivalent minimum rental rate is approximately $2.18/s.f., at the mid-to-high end of the comparable range, when taking into account the burden of both tenant and public access improvements by Bundox.

In addition, with regard to percentage rent, the typical range for restaurants is 5% to 7% of gross sales. Percentage rent is negotiated taking into consideration a restaurant's operating experience and projections, landlord improvements and minimum base rent. In addition, economic environment is a factor, as well as restaurant size. Bundox's proposed percentage rent of 6% is mid range and given the capital invested in both restaurant and public access improvements by the tenant, well within the market. As shown above, when rent is viewed as a percentage of gross sales, not merely the minimum rent component structured in the lease, the Waterfront lease proposal estimates that rent paid to the Port will be well within the comparable range--estimated at $2.17/s.f./mo (based on sales of $4 million) up to $3.26/s.f./month (based on sales of $6 million), depending on the sales volume reached. Should Waterfront's sales levels climb to $7 million (as was demonstrated in 2000, expected rent to the Port would be approximately $3.81/s.f./month. Market comparables noted range from $2.54/s.f./month to $3.45/s.f./month, and higher for extremely well performing restaurants such as Boulevard.

Perceived advantages to Bundox in the short term (until the Threshold Date or 2/1/07) again take into consideration the value provided by Bundox when the lease was originally done in 1996, in providing for the funding of significant capital improvements on behalf of the Port. In addition, the Port negotiated significant benefits to be realized at the back end of the deal. These benefits include consent rights on sale, a priority repayment of deferred rent after repayment of the loan to MOCD, and participation in 50% of all net remaining sale proceeds, which is atypical of any lease transaction.

Items 8 – File 03-0885

Departments: Mayor's Office of Public Finance
Recreation and Park Department (RPD)

Item: Resolution authorizing and directing the sale of not to exceed $20,960,000 City and County of San Francisco General Obligation Bonds (Neighborhood Recreation and Park Facilities Improvement Bonds, 2000), Series 2003A; prescribing the form and terms of said bonds; authorizing the execution, authentication and registration of said bonds; providing for the appointment of depositories and other agents for said bonds; providing for the establishment of accounts related thereto; approving the forms of official notice of sale and notice of intention to sell bonds; directing the publication of the notice of intention to sell bonds; approving the form and execution of the official statement relating thereto; approving the form of the continuing disclosure certificate; approving modifications to documents; ratifying certain actions previously taken; and granting general authority to City officials to take necessary actions in connection with the authorization, issuance, sale and delivery of said bonds.

Amount: Not to exceed $20,960,000

Descriptions: In March of 2000, San Francisco voters approved the issuance of $110,000,000 in General Obligation bonds, known as the Neighborhood Recreation and Park Facilities Improvement Bonds, to provide for the acquisition, construction and/or reconstruction of neighborhood recreation and park facilities and properties. On June 14, 2000 the City sold the first series of Neighborhood Recreation and Park Facilities Improvement Bonds in the amount of $6,180,000 after obtaining Board of Supervisors authorization (File No. 00-0679), and on January 7, 2001 the City sold the second series of these same bonds in the amount of $14,060,000 after obtaining Board of Supervisors authorization (File 00-1612) leaving an unsold bonded indebtedness capacity of $89,760,000 under this bond issue ($110,000,000 less $6,180,000 less $14,060,000).

The proposed resolution would authorize and direct a third sale of the Neighborhood Recreation and Park Facilities Improvements Bonds, Series 2003A in a principal amount not to exceed $20,960,000, resulting in unsold bonds of $68,800,000 ($89,760,000 less $20,960,000). The proposed resolution would also approve the form and terms of the documents and official notices related to the sale, and authorize City officials to take various actions necessary to carry out the sale of bonds.

Mr. Gary Hoy of the Recreation and Park Department reports that the proposed sale of up to $20,960,00 in bonds is the sum of $10,360,000 in bonds appropriated by the Board of Supervisors for FY 2001-2002 and $10,720,000 in bonds appropriated by the Board of Supervisors for FY 2002-2003, less $120,000 in issuance cost savings realized by combining the sale of these appropriated bond amounts with the sale of Educational Facilities Bonds, Series 2003B.

General provisions in the subject resolution regarding the sale of bonds are as follows:

- The sale of the bonds is tentatively scheduled for June 25, 2003.
- The bonds would be sold at an interest rate not to exceed 12 percent per year and would have a final maturity in 20 years, on June 15, 2023.
- An official statement describing the proposed bonds is referenced in the proposed resolution for approval by the Board of Supervisors. The official statement would be available to all potential bidders for the bonds.
- Bonds would be awarded to the bidder whose bid represents the lowest total interest cost to the City.

Budget: The Recreation and Park Department (RPD) proposes to expend the estimated $20,960,000 in proceeds from the Neighborhood Recreation and Park Facilities Improvement Bonds, Series 2003A, on projects as shown in Attachment I, provided by the RPD. A description for

each of these projects is contained in Attachment II, provided by the RPD.

Comments:

1. Under the proposed sale of the Neighborhood Recreation and Park Facilities Improvement Bonds, Series 2003A the annual interest rate for the $20,960,000 cannot exceed 12 percent. However, Ms. Karen Ribble of the Mayor's Office of Public Finance reports that if the bonds are sold in June of 2003 as is currently planned, the bonds would be sold at an estimated overall effective interest rate of 4.57 percent.

2. According to Ms. Ribble, the proposed sale of the Neighborhood Recreation and Park Facilities Improvement Bonds, Series 2003A, in the amount of $20,960,000 would result in a total debt service of approximately $32,197,024 ($20,960,000 in principal payments plus $11,237,024 in interest costs) over the 20-year life of the bonds. The average debt service payment per year would be approximately $1,609,851 annually.

3. According to Ms. Peg Stevenson of the Controller's Office, the proposed sale of the Neighborhood Recreation and Park Facilities Improvement Bonds, Series 2003A, in the amount of $20,960,000, would result in an increase in the Property Tax rate in Fiscal Year 2003-2004 of approximately $.001769 per $100 of assessed value. At that rate, the owner of a single family residence assessed at $400,000 (after allowing for the Homeowner's Exemption Credit) would pay $6.95 in additional Property Taxes annually due to the sale of these bonds.

4. As shown in Attachment III, provided by Ms. Ribble, the City's General Obligation bonding capacity, which is equal to three percent of the City's net assessed property value, is $2,812,149,774 based on a net assessed valuation of $93,738,325,815 for Fiscal Year 2002-2003. Ms. Ribble states that, as of May 1, 2003, the City had $921,900,000 in outstanding aggregate principal amount of General Obligation bonds, not including the subject bonds of this resolution. Therefore, Ms. Ribble advises that the City's current available General Obligation bonding capacity is approximately $1,890,249,774. The proposed sale of bonds in the amount of up to $20,960,000 in General Obligation

bonds, would reduce the City's bonding capacity from $1,890,249,774 to $1,869,289,774. Ms. Ribble reports that in addition to the proposed sale of bonds totaling up to $20,960,000 the Mayor's Office of Public Finance also intends to sell $29,480,000 in Educational Facilities Bonds, Series 2003B on behalf of the San Francisco Unified School District, as previously approved by the Board of Supervisors (File 01-2190), further reducing the City's bonding capacity to $1,839,809,774. Ms. Ribble points out that the City's bonding capacity varies from time to time as bonds are repaid and new bonds issued.

5. Ms. Ribble states that the full cost of selling $20,960,000 in Neighborhood Recreation and Park Facilities Improvement Bonds, Series 2003A and $29,480,000 in Educational Facilities Bonds, Series 2003B, including fees for bond counsel, financial advisors, financial printing, and the services of the Mayor's Office of Public Finance and the City Attorney, is expected to be approximately $230,000. Of this $230,000, approximately $98,343, or 0.47 percent of the total value of the Neighborhood Recreation and Park Facilities Improvements Bonds to be sold, would be funded through proceeds from the proposed bond sale. The remaining $131,657 in issuance costs would be funded from proceeds from the sale of the $29,480,000 in Educational Facilities Bonds, Series 2003B, previously authorized by the Board of Supervisors.

Recommendation: Approve the proposed resolution.

3rd and 4th Bond Sale - NEIGHBORHOOD PARKS BOND

Project	Total Project Costs			Costs Funded through Current Sale(s)		
	Budget	Design and Management Costs (Soft)	Construction Costs (Hard)	Design and Management Costs (Soft)	Construction Costs (Hard)	3rd & 4th Bond Sales Total
Rochambeau PG	$ 1,195,000	$ 794,800	$ 400,200	99,550	400,200	499,750
Rochambeau PG - Club House	$ 779,000	$ -	$ 779,000		779,000	779,000
Alta Plaza Park - Children's Playstructure	$ 375,000	$ 65,000	$ 310,000	-	310,000	310,000
Moscone PG - Recreation Center	$ 8,000,000	$ 1,216,000	$ 6,784,000	470,939	-	470,939
Chinese Recreation Center	$ 8,000,000	$ 1,440,000	$ 6,560,000	550,000	-	550,000
Helen Wills Park	$ 968,860	$ 610,000	$ 2,510,000	-	529,460	529,460
Helen Wills Park - Clubhouse	$ 2,151,140			-	695,061	695,061
North Beach PG - Pool	$ 6,051,383	$ 870,383	$ 5,181,000	-	872,285	872,285
Larsen Park - Sava Pool	$ 8,000,000	$ 1,440,000	$ 6,560,000	510,000	-	510,000
Parkside Square Children's Playstructure	$ 1,462,500	$ 320,000	$ 1,142,500	157,500	1,142,500	1,300,000
Alamo Square- Children's Playstructure	$ 1,220,000	$ 418,470	$ 801,530	-	782,400	782,400
Hamilton PG - RC and Pool	$ 12,500,000	$ 1,907,426	$ 10,592,574	786,756	-	786,756
Hoff Street Park	$ 1,320,000	$ 290,400	$ 1,029,600	-	523,904	523,904
SOMA Park	$ 4,500,000	$ 534,000	$ 3,966,000	79,609	-	79,609
Aptos Playground	$ 2,420,000	$ 204,000	$ 2,216,000	-	2,240,000	2,240,000
West Portal Playground	$ 750,000	$ 68,700	$ 681,300	38,700	681,300	720,000
West Portal PG - Clubhouse	$ 1,000,000	$ 253,000	$ 747,000	-	747,000	747,000
Eureka Valley PG and Recreation Ctr.	$ 5,520,000	$ 800,000	$ 4,720,000	-	555,647	555,647
Upper Noe Playground & Rec Center	$ 6,600,000	$ 1,255,500	$ 5,344,500	741,031	-	741,031
Walter Haas PG	$ 1,640,000	$ 46,700	$ 1,593,300	-	1,300,000	1,300,000
Garfield Square - Children's Playstructure	$ 965,000	$ 289,500	$ 675,500	200,753	-	200,753
Holly Park	$ 1,936,000	$ 467,500	$ 1,468,500	-	1,440,000	1,440,000
Herz PG - Coffman Pool	$ 6,000,000	$ 1,080,000	$ 4,920,000	550,000	-	550,000
Joseph Lee PG - Recreation Center	$ 8,000,000	$ 1,440,000	$ 6,560,000	983,235	-	983,235
Reis Tract - Campbell-Rutland Mini Park	$ 830,000	$ 206,500	$ 623,500	-	490,000	490,000
Youngblood Coleman - Field Renov.	$ 1,495,000	$ 136,418	$ 1,358,582	-	425,000	425,000
Balboa Park	$ 1,844,404	$ 276,664	$ 1,567,740	347,029	-	347,029
Oceanview Playground	$ 3,000,000	$ 322,000	$ 2,678,000	521,033	-	521,033
Oceanview PG - Recreation Center	$ 9,950,000	$ 1,535,000	$ 8,415,000	911,765	-	911,765
Bond Issuance Cost	$ 865,893	$ 865,893		98,343	-	98,343
TOTAL	**$ 109,339,180**	**$ 19,153,854**	**$ 90,185,326**	**$ 7,046,243**	**$ 13,913,757**	**$ 20,960,000**

DATE: May 27, 2003

TO: Salvador Sanchez
c/o Harvey Rose, Budget Analyst

FROM: Gary Hoy, Capital Program Manager, Recreation and Park Department

CC: Karen Ribble, Mayor's Office - Public Finance
Kathy How, Recreation and Park Dept.
Angela Gengler, Recreation and Park Dept.

RE: Neighborhood Recreation and Park Facilities Improvement Bonds – Project Description

Bond sales were anticipated in FY 01-02 and FY 02-03, and appropriated in those years at the sum of 10,360,000 and 10,720,000 respectively. They were anticipated to be two separate sales but are now combined. The following is a condensed version of the Project Descriptions as you requested. If needed, more detailed information can be found on our web-site.

Rochambeau Playground - 499,750: The project has been bid and contract awarded. Funds from this sale will supplement existing Open Space Funds and provide for the complete renovation of the playground.

Rochambeau PG – Clubhouse – 779,000: The project has been bid and contract awarded. Funds from this sale will be used for the addition and renovation of the existing Clubhouse.

Alta Plaza Park – 310,000: Project is in the design phase and will be bid this summer. Funds from this sale will provide for improvements to paths and facilities in conjunction with the renovation of the children's play structure (provided as a philanthropic gift).

Moscone PG – Recreation Center - 470,939: The project is in the planning phase. Funds from this sale will augment previous bond funds and be used to support the design services necessary for the renovation and addition to the existing Center.

Chinese Recreation Center – 550,000: This project is in the planning phase. Funds from this sale will augment previous bond funds and used to support the design services necessary for the seismic upgrade and renovation of the existing Center.

Capital Improvement Division
30 Van Ness Ave., 5th Floor
San Francisco, CA 94102

FAX: (415) 581-2540
Phone: (415) 581-2559

Helen Wills Park – 529,460: Project is ready to bid. Funds from this sale will supplement a State grant and provide for the complete renovation of the playground and court areas.

Helen Wills Park – Clubhouse – 695,061: Project is ready to bid. Funds from the sale will supplement a State grant and provide for the replacement of the Clubhouse and play structure.

North Beach PG – Pool – 872,285: This project has been designed and bid. Funds from this sale will supplement existing Open Space Funds and provide for the renovation of the Pool and associated locker rooms.

Larsen Park – Sava Pool – 510,000: Project is in the planning phase. Funds from this sale will be used to support the design services necessary for the renovation and addition to the existing pool.

Parkside Square – Children's Play Structure – 1,300,000: Project has been bid and awarded. Funds from this sale will supplement previous bond proceeds and provide for the replacement of the children's play structure.

Alamo Square – Children's Play Structure – 782,400: This project has been designed and ready to advertise for bids. Proceeds from this sale will be used for the renovation of the play structure and associated pathway improvements.

Hamilton PG – Recreation Center and Pool – 786,756: The project is in the planning phase. Funds from this sale will be used to support the design services necessary for the renovation and addition to the Pool and Recreation Center.

Hoff Street Park – 523,904: The project has been designed and bid. Proceeds from the sale will supplement existing Open Space funds to develop recently acquired property and create a new park on Hoff Street near 16th Street.

SOMA Park – 76,609: This project is in the planning phase. Funds from this sale will supplement previous bond funds and support the design services necessary for the renovation of the Bessie Charmichael School site into a new park.

Aptos Playground – 2,240,000: The project is in the design phase and will be bid in fall. Proceeds from this sale will provide for the renovation and new construction of access and entry improvements to this Playground.

West Portal Playground – 720,000: The project has been designed and ready to bid. Funds from this sale will provide for the renovation of the playground, provide access improvements and address drainage problems.

West Portal PG – Clubhouse – 747,000: The project has been designed and ready to bid. Proceeds of this sale will be used for the renovation of and addition to the existing Clubhouse.

Eureka Valley PG and Recreation Center – 555,647: The project is in the design phase and will be advertised this summer. Proceeds of this sale will augment Open Space funds and provide for the renovation and expansion of the Center and new play structure.

Upper Noe PG and Recreation Center – 741,031: This project is in the planning phase. Funds from this sale will supplement previous sales and be used to support the design services necessary for the seismic upgrade and renovation of the existing Center.

Walter Haas Playground 1,300,000: The project is in the design phase and will be advertised this summer. Funds from this sale will supplement previous sales and provide for the renovation of the playground, provide access improvements and new play structures for children.

Garfield Square – 200,753: The project is in the design phase and will be advertised this summer. Funds from this sale will supplement previous sales and provide design services for the renovation of the south side of the park, provide access improvements and a new play structure for children.

Holly Park – 1,440,000: The project has been designed and bid. Funds from this sale will supplement previous sales and will provide for the renovation of the park, provide access improvements, lighting and landscaping, and a new play structure for children.

Herz PG – Coffman Pool – 550,000: This project has just finished the planning phase and is in design. Funds from the sale will be used to support the design services necessary for the renovation of the existing pool and locker areas.

Joseph Lee PG – Recreation Center – 983,235: The project is in the planning phase. Funds from this sale will supplement previous sales and be used to support the design services necessary for the seismic upgrade and renovation of the existing Center.

Reis Tract – Campbell Rutland Mini Park – 490,000: The project has been designed and bid. Proceeds from the sale will supplement previous sales and open space funds and used to fund the development of this parcel into a children's garden and connect it to adjoining lots on either side.

Youngblood Coleman – 425,000: The field renovation project is in construction. Funds from this sale will be used improve access to the play field with restroom facilities that support recreation and organized sports.

Balboa Park – 347,029: The project is in the planning phase. Proceeds from the sale will supplement previous sales and used to fund the design of the east side of the park addressing the renovation of the children's play structure and drainage issues on the fields.

Oceanview Playground – 521,033: The project is currently in design with bid anticipated for this fall. Proceeds will be used to fund the design of the playground improvements on the reclaimed park site vacated by the removal of the existing Recreation Center.

Oceanview PG – Recreation Center – 911,765: The project is currently in design with bid anticipated for this fall. Proceeds from the sale will supplement previous sales and be used to fund the design of a new recreation center to replace the existing facility.

Bond Issuance Costs – 98,343. Cost of issuance of bonds.

The following table summarizes the allocations by project and the use:

	Costs Funded through Current Sale(s)		
	Design and Management Costs	Construction Costs	3rd & 4th Bond Sales Total
Project	**(Soft)**	**(Hard)**	
Rochambeau PG	99,550	400,200	499,750
Rochambeau PG - Club House		779,000	779,000
Alta Plaza Park - Children's Play Structure	-	310,000	310,000
Moscone PG - Recreation Center	470,939	-	470,939
Chinese Recreation Center	550,000	-	550,000
Helen Wills Park	-	529,460	529,460
Helen Wills Park – Clubhouse	-	695,061	695,061
North Beach PG – Pool	-	872,285	872,285
Larsen Park - Sava Pool	510,000	-	510,000
Parkside Square Children's Play Structure	157,500	1,142,500	1,300,000
Alamo Square- Children's Play Structure	-	782,400	782,400
Hamilton PG - RC and Pool	786,756	-	786,756
Hoff Street Park	-	523,904	523,904
SOMA Park	79,609	-	79,609
Aptos Playground	-	2,240,000	2,240,000
West Portal Playground	38,700	681,300	720,000
West Portal PG – Clubhouse	-	747,000	747,000
Eureka Valley PG and Recreation Center	-	555,647	555,647
Upper Noe Playground & Rec. Center	741,031	-	741,031
Walter Haas PG	-	1,300,000	1,300,000
Garfield Square - Children's Play Structure	200,753		200,753
Holly Park	-	1,440,000	1,440,000
Herz PG - Coffman Pool	550,000	-	550,000
Joseph Lee PG - Recreation Center	983,235	-	983,235
Reis Tract - Campbell-Rutland Mini Park	-	490,000	490,000
Youngblood Coleman - Field Renovation	-	425,000	425,000
Balboa Park	347,029	-	347,029
Oceanview Playground	521,033	-	521,033
Oceanview PG - Recreation Center	911,765	-	911,765
Bond Issuance Cost	98,343	-	98,343
TOTAL	**$ 6,845,490**	**$ 14,114,510**	**$ 20,960,000**

Appendix A

Calculation of Debt Limit Ratio

Debt Limit Ratio: 3% of Net Assessed Value	
Assessed Value (8/15/02)	$97,535,748,109
Less Exemptions	(3,797,422,294)
Net Assessed Value (8/15/02)	$93,738,325,815
Legal Debt Capacity (3%)	$2,812,149,774
Outstanding G.O. Bonds (5/1/03)	$921,900,000
G.O. Debt Ratio (5/1/03)	0.98%
Avail. Capacity	$1,890,249,774
Avail. Capacity AFTER issuance of Series A Bonds	$1,869,289,774
Avail. Capacity AFTER issuance of Series B Bonds	$1,839,809,774

Item 9 - File 03-0742

Note: This item was amended and continued by the Finance and Audits Committee at its meeting of May 21, 2003.

Department: Department of Elections

Item: Ordinance appropriating funding not to exceed $1,600,000 from the General Fund Reserve for professional services to implement a ranked-choice voting system for the Department of Elections.

Source of Funds: General Fund Reserve

Budget: Up to $1,600,000 for Equipment and Professional Services

Description: In March of 2002, the voters of San Francisco approved a Charter Amendment (Proposition A) to require the City to use an Instant Run-Off (also known as ranked-choice) voting method to replace separate run-off elections for local offices. Ranked-choice voting permits each voter to rank at least a first, second and third choice among the local candidates for office during one election. When the votes are counted by the Department of Elections, if one candidate receives more than 50 percent of the first-choice votes in the first round, then that candidate is elected. However, if no candidate receives more than 50 percent of the first-choice votes, the candidate who receives the fewest first-choice votes would be eliminated and those voters whose first choice candidate was eliminated would then have their votes transferred to their second-choice candidate. This process of transferring votes to the voter's next-choice candidate and eliminating candidates with the fewest votes would be repeated until one candidate received more than 50 percent of the votes. In accordance with Proposition A, the City must begin using the new ranked-choice voting method no later than November of 2003.

The proposed ordinance would appropriate up to $1,600,000 from the General Fund Reserve for the Department of Elections to fund an amendment to

an existing contract with Election Systems & Software (ES&S). ES&S would use these funds to modify the City's existing elections hardware and software systems in order to implement ranked-choice voting in San Francisco. According to Mr. John Arntz of the Department of Elections, under the proposed amended contract, ES&S would develop (1) a memory flashcard to capture the ranked-choice votes, and (2) firmware or embedded chips to give instructions to the system to change the way that votes are tabulated. In addition, under the proposed contract, ES&S would be responsible for acceptance testing of the system and equipment to insure that the system design and implementation become operational.

Comments:

1. According to Mr. Arntz, ES&S has an existing contract with the Department of Elections for a total of $4,576,577 to provide the existing election equipment, software and network, as well as for ongoing technical support during each election. The existing ES&S contract extends until January of 2005. The proposed up to $1,600,000 amendment to the ES&S contract would result in a total contract of $6,176,577 between the City and ES&S.

2. Under the proposed amended contract between the Department of Elections and ES&S, the Department would make six milestone payments to ES&S, if specific requirements to implement a ranked-choice voting system are achieved by ES&S. A memorandum from Mr. Arntz, to the President of the Board of Supervisors, dated April 24, 2003 is included as Attachment I and identifies the six milestone payments that would be made by the City to ES&S.

3. According to Mr. Arntz, the additional work providing for the additional payments of up to $1,600,000 was not competitively bid because based on informal discussions with other vendors, other vendors were not sufficiently familiar with the City's existing optical scanning voter equipment, but, rather were more familiar with touchscreen voting equipment. Regarding the basis for the

projected up to $1,600,000 contract amendment to complete the work as described above, Mr. Arntz provided an ES&S price listing of hardware, software and network requirements which totals approximately $1,600,000. Mr. Arntz notes that ES&S has never previously modified an optical scanning equipment system to accommodate ranked-choice voting, as is being requested by San Francisco. Mr. Arntz advises that the Department of Elections and the City Attorney's Office have been in negotiations with ES&S since approximately January of 2003 with respect to the additional work to be provided by ES&S.

4. According to Mr. John Mott-Smith of the California Secretary of State's Office, prior to implementing any ranked-choice voting election system, the Secretary of State must certify the proposed election system and procedures that would be used to record the election results. Mr. Mott-Smith advises that currently no ranked-choice voting system for San Francisco, or for any other jurisdiction in California, has been certified by the Secretary of State. In addition, Mr. Mott-Smith advises that it has historically been the position of the Secretary of State's Office that, prior to the State certifying any software modifications to existing voting systems, the proposed modifications must also undergo Federal testing by the Independent Testing Authority for compliance with the Federal Election Commission's requirements. However, Mr. Mott-Smith advises that whether such Federal testing would be required cannot be determined until an application for certification is received by the Secretary of State's Office. Mr. Mott-Smith could not estimate precisely how long such Federal testing would take, but noted that such testing could take up to several months.

After approval of the Federal requirements, the State would undertake their certification process, which Mr. Mott-Smith estimates would require

approximately 45 days. According to Mr. Mott-Smith, the State certification process primarily focuses on performance testing and analysis of the proposed ranked-choice voting system, including full compliance with all applicable State and local laws, an on-site demonstration of the system, an independent consultant's review and then recommendation by the Secretary of State's Voting Systems Panel, primarily comprised of Secretary of State staff.

5. On March 14, 2003, the Department of Elections submitted an application to the Secretary of State for certification of a manual ranked-choice voting system to capture votes according to Proposition A's requirements. The Department indicated that this application was being submitted to the Secretary of State "to ensure that San Francisco has a system in place to capture voters' intent should we be unable to use a fully mechanized vote tabulation system for our November 2003 election." In this application, the Department of Elections states that in order to "successfully implement this manual system, or any system, we think that the certification process must be completed before July 1, 2003", which the Budget Analyst notes would be in less than six weeks from the May 21, 2003 Finance Committee meeting.

On March 27, 2003, the Secretary of State advised the Department of Elections that the application, as submitted, for certification of a manual ranked-choice voting system, was not complete and not in the correct format. On April 18, 2003, the Department of Elections resubmitted this application for certification of a manual ranked-choice voting system, to include additional information in the format specified by the Secretary of State. Mr. Arntz advises that the Department of Elections will be conducting a demonstration of the proposed manual ranked-choice voting system to the Secretary of State on before the end of May of 2003.

Mr. Arntz estimates that if this manual ranked-choice voting system is certified by the Secretary of State, the City would incur approximately $2,600,000 of additional costs, above the amount that would otherwise be needed to conduct the November 4, 2003 election, consisting primarily of hiring additional temporary personnel for counting the ranked-choice ballots. Mr. Arntz estimates that the counting of such ranked-choice ballots is expected to take all of November and possibly into December of 2003. The Budget Analyst notes that, without ranked-choice voting, after the November 4, 2003 election, the regular run-off election would be held on December 9, 2003, and would result in an additional cost to the City of an estimated $1,500,000, or $1,100,000 less than the manual counting of the ranked-choice ballots. In response to Budget Analyst inquiries, Mr. Arntz advises that the Department of Elections needs to certify the election results within 28 days and he is concerned whether the Department will be able to meet that deadline with a manual count.

6. As previously noted, Attachment I addresses the critical milestones for implementing a ranked-choice voting system that would need to be achieved by ES&S under the proposed amended contract provisions. ES&S would be paid up to $1,600,000 to achieve such milestones. Critical Milestone #1 requires ES&S to submit an Application for Certification of the Ranked Choice Voting System to the California Secretary of State, which must be completed no later than July 1, 2003. Based on inquiries of the Budget Analyst, Ms. Claire Sylvia of the City Attorney's Office advises that the intent of the proposed amended contract language is to require that ES&S submit a completed application to the Secretary of State, in order to achieve Critical Milestone #1.

In addition, Critical Milestone #2 requires approval by the Secretary of State of the ranked-choice voting system, which must be completed no later than August 1, 2003. The Budget Analyst notes that, if the ES&S system is not certified by August

1, 2003, and all of the prior Critical Milestones are achieved by their earliest due dates, the Department of Elections would still have paid ES&S up to $300,000. Based on discussions with Ms. Sylvia, if the Secretary of State does not certify the proposed ES&S ranked choice voting system by August 1, 2003, the Department of Elections could terminate the ranked-choice voting portion of the ES&S contract, at that time. However, the City would already have paid ES&S up to $300,000.

7. Attachment II, provided by Mr. Arntz identifies another alternative ranked-choice voting through a central processing system, which would bring all ballot cards from the polling places to City Hall for processing. As shown in Attachment II, the Department of Elections has made a preliminary estimate that it would cost $869,980 to implement this alternative processing system, with additional costs of approximately $800,000 for ES&S, or total costs of approximately $1,669,980. However, as identified in Attachment II, the Department advises that there are several disadvantages of this alternative. In addition, Mr. Arntz advises that the Department has not submitted this alternative processing system to the Secretary of State for certification.

8. Historically, a run-off election in San Francisco has cost approximately $1,500,000. If the proposed up to $1,600,000 supplemental appropriation results in the development of a modified system and software, that is certified by the Secretary of State, to implement ranked-choice voting in November of 2003, approval of the proposed one-time up to $1,600,000 supplemental appropriation cost could result in significant future potential savings, each time that a run-off election in the City is required. However, Mr. Arntz advises that there are likely to be other additional costs incurred for the November 4, 2003 ranked-choice election due to the need to provide additional training for staff, more ballots that are likely to be spoiled, and support staff to assist voters in utilizing the new ranked-choice voting procedures,

although Mr. Arntz cannot provide a budget estimate of such additional costs. Mr. Arntz notes that a separate $2,400,000 supplemental appropriation is currently pending for the Department of Elections to conduct education and outreach to San Francisco voters regarding ranked-choice voting.

Recommendation: Based on voter approval of an Instant Run-Off (Ranked-Choice) voting method, approve the proposed Ordinance.

DEPARTMENT OF ELECTIONS
City and County of San Francisco

JOHN ARNTZ
Director

TO: Honorable Matt Gonzalez, President San Francisco Board of Supervisors
FROM: John Arntz, Director, Department of Elections
SUBJECT: Supplemental Appropriation for ES&S Contract
DATE: April 24, 2003

I am sending this memorandum in response to your request for information regarding the cost of modifying the contract with our election systems provider ES&S to implement ranked-choice voting for the November 4, 2003 election.

Please note that the Department and ES&S have not finalized every aspect of the contract as of today. Still, the process is nearly complete for clarifying what ES&S will provide to the City and the costs for this service. Even though we do not expect the costs listed in this memorandum to change before finalizing the contract, there is always the chance that the amounts may increase or decrease.

Presently the cost of the vendor-supplied services will not exceed $1.5 million in addition to the annual service payment of $145,900

The milestone payments are scheduled as follows:

1. Payment # 1 – If ES&S has delivered the design specifications for all RCV-modified Hardware, Firmware, and Application Software to Department of Elections, ES&S may submit an invoice for $100,000.

2. Payment #2 – If ES&S has met RCV Critical Milestone #1 on or before June 2, 2003, it may submit an invoice for $200,000. If ES&S has failed to meet RCV Critical Milestone #1 on or before June 2, 2003 but has met the critical milestone on or before June 9, 2003, it may submit an invoice for $150,000. If ES&S has failed to meet RCV Critical Milestone #1 on or before June 9, 2003 but has met the critical milestone on or before July 1, 2003, ES&S may submit an invoice for $100,000.

3. Payment #3 – If ES&S has met RCV Critical Milestone #2, ES&S may submit an invoice for $200,000.

4. Payment #4 – If ES&S has met RCV Critical Milestone #3, ES&S may submit an invoice for: (a) $250,000, if ES&S met RCV Critical Milestone #1 after June 9, 2003; (b) $200,000, if ES&S met RCV Critical Milestone #1 after June 2, 2003 but on or before June 9, 2003; or (c) $150,000, if ES&S met RCV Critical Milestone #1 on or before June 2, 2003.

5. Payment #5-ES&S may submit an invoice for $100,000 on November 5, 2003, if ES&S has satisfactorily performed all election day Services in accordance with Appendices B, C-1, and D.

6. Payment #6 – If ES&S has met RCV Critical Milestone #5, it may submit an invoice for $750,000.

As referenced in the payment schedule, Critical Milestone #1 requires ES&S to submit an Application for Certification of a RCV-modified Voting System to the California Secretary of State; Critical Milestone #2 requires approval by the Secretary of State of that RCV-modified voting System; Critical Milestone #3 requires delivery of the Eagle Hardware Upgrade material, installation of all Hardware, Firmware, and Application Software certified by the Secretary of State, and performance of Initial and End to End RCV Acceptance Testing of all RCV Hardware, Firmware, and Application Software; Critical Milestone #5 requires certification of the Logic and Accuracy testing.

Please contact the Department at (415) 554-4375 if you need any additional information.

J.A.

DEPARTMENT OF ELECTIONS
City and County of San Francisco

JOHN ARNTZ
Director

To: Debra Newman, Budget Analyst, Board of Supervisors
From: John Arntz, Director of Elections
Re: Centrally Processing Ranked-Choice Ballots
Date: May 15, 2003

In response to your concerns regarding the costs for implementing ranked-choice voting (RCV) in San Francisco, the Department of Elections has reviewed the option of bringing all cards from the polling places to City Hall for processing. A "central processing plan" means that we would not capture votes at the polling places as is the current process, but will read the cards on the optical scanning equipment used to currently read absentee ballots mailed to City Hall.

A central processing plan could serve as a workable contingency plan in the event the machines used at the precincts, "eagles," cannot be modified in time for the upcoming election. The advantage of capturing votes at the precinct level is we can transmit the results to City Hall on the evening of the election. The advantage of a central processing approach is that it is probably less costly than a precinct-based system, although the costs for central processing will be recurring for each subsequent election. Two disadvantages are that bringing cards to City Hall for processing creates significant issues regarding ballot security, and, we will gather election results piecemeal over a two-week period.

The Department uses two "IV-C" optical scanning units at City Hall for processing primarily absentee and provisional ballots. To process all RCV cards from all precincts, we expect to need seven to nine machines. The Department does not have the space available for both the necessary equipment and personnel. While planning our manual process to count votes, we tried to find a suitable location. We were unsuccessful. The Department would need assistance finding a location at a suitable cost. Ideally, we prefer to have one location for the processing of precinct, absentee, and provisional ballots. If we create a separate location for a central processing approach, we will need to move all our servers and computer equipment to this site. As with ballots, any handling of the equipment devoted specifically to processing votes is a highly sensitive matter.

1 Dr Carlton B Goodlett Place – Room 48, San Francisco CA 94102-4634
Voice (415) 554.4375 Fax (415) 554.7666

Still, it is less expensive to move all of the equipment than attempting to develop a secure line to servers located in City Hall. Any location must be suitable for using the equipment since adding fans, additional power sources, and server connections are expensive, and may be utilized for only one election since we would need to return the equipment to our City Hall office. The location will also determine costs associated with security and personnel.

Finally, we have no estimate on the costs our vendor ES&S will incur in implementing a central processing method.

Encl; Budget Estimate

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Department of Elections
City and County of San Francisco

Draft Budget Estimate for Central Processing Location - Additional IV-C machines to tabulate the RCV Cards

	Item description	Quantity	Rental rate	Hourly Rate	Days	Total Cost	
1	**Rental of Additional IV-C machines** (should include set Installation, set-up and wiring cost - for a **total of 9 units)**	7	$10,000.00		1 mo.	$70,000.00	$70,000.00
2	**Staging and storage space** - used for staging RCV cards for computer processing - used for storage of tabulated RCV cards	3000	?		?	?	?
3	**Staffing**						
	Vendor personnel	?		?	15	?	
	Security personnel	?		?	15	?	
	Logistic staff	20		$25.00	15	$60,000.00	
	RCV Card preparation	20		$25.00	15	$60,000.00	
	IV-C machine assistants	16		$25.00	11	$35,200.00	
	Lead persons	4		$25.00	15	$12,000.00	
	Review/Remake staff	200		$25.00	11	$440,000.00	
	Remake monitors	10		$25.00	11	$22,000.00	
	Outstack assistant	9		$25.00	11	$19,800.00	
	Observer guides	8		$25.00	15	$24,000.00	$ 673,000.00 Plus
4	**Secured Communication Network Line for the IV-C machines outside the computer room (Adm.Services, DTIS, Building Operations, DPW, Electricians)**	1				$100,000.00	$100,000.00
5	**Supplies, materials, and equipment (boxes, header cards, markers, seals, gloves, pallet jacks, fork lifts)**	1		$25,000.00		$25,000.00	$25,000.00
6	**Vehicles (16 ft box truck)**	2	$495.00/wk		2 wks	$1,980.00	$1,980.00
					Known Estimated Cost :		**$ 869,980.00 Plus**

Item 10 - File 03-0845

Department: Department of Elections

Item: Ordinance appropriating $2,416,160 from the General Fund Reserve to implement the ranked-choice voting education plan for the Department of Elections.

Source of Funds: General Fund Reserve

Budget:

$1,509,640	Professional & Specialized Services
27,000	Vehicle Rental
321,000	Postage
275,000	City Grant Program
64,000	Equipment
60,000	Services of Other Depts. – Telephone
159,520	Services of Otr Depts.- Reproduction
$2,416,160	Total

Description: In March of 2002, the voters of San Francisco approved a Charter Amendment (Proposition A) to require the City to use an Instant Run-Off (also known as Ranked Choice) voting method to replace separate run-off elections for local offices. In accordance with Proposition A, the City must begin using Ranked Choice Voting (RCV) no later than November of 2003. The proposed supplemental appropriation would be used by the Department of Elections to fund outreach and public education to inform San Francisco voters about RCV.

Attachment I, provided by the Department of Elections, contains the Ranked Choice Voting Public Education Plan including the various mechanisms and a detailed budget for the proposed $2,416,160 that would be expended over an approximately six month period from mid-May through mid-November of 2003. As shown in Attachment I, the Department of Elections would (a) conduct two Citywide postcard mailings at a cost of $692,000, (b) produce various posters and flyers in four different languages to be distributed in public places throughout the City at a cost of $174,520, (c) conduct press releases and interviews at a cost of $10,000, (d) produce 44 paid newspaper advertisements at a cost of $97,786, (e) include information in the Voter Information Pamphlets (VIP) at a cost of $24,000, (f) produce and place cable, broadcast

and radio advertisements, at a cost of $259,375, (g) conduct additional radio and television press releases and interviews, at a cost of $10,000, (h) create and maintain a new RCV interactive website at a cost of $96,500, (i) produce a separate instructional video in multiple languages at a cost of $40,310, (j) produce public service announcements at a cost of $38,000, (k) conduct 300 outreach workshops and presentations in multiple languages at a cost of $149,000, (l) recruit one non-profit community organization in each of the 11 Supervisors Districts, at an estimated cost of $25,000 per organization, plus $56,000 in related expenditures to promote RCV at an overall cost of $331,000, (m) provide all candidates and campaigns with a demonstration of RCV workshop at a cost of $20,500 (candidates "Brown Bag Lunch" meetings), (n) staff several information booths at a cost of $170,449, (o) set up a dedicated RCV telephone hotline staffed with bilingual employees at a cost of $66,300, (p) provide outreach at street fairs, festivals and community events at a cost of $20,000, (q) conduct additional poll worker training at a cost of $57,750, and (r) provide additional administrative support at a cost of $158,670.

Comments:

1. The Budget Analyst questions the magnitude and complexity of the requested expenditures of the Department of Elections proposed Ranked Choice Voting Public Education Plan, given the uncertainty of Ranked Choice Voting being implemented for the November of 2003 election, coupled with significant General Fund reductions in FY 2003-2004. Furthermore, the Budget Analyst questions whether the Department of Elections would be able to conduct the type of extensive outreach and public education plan that is being proposed, given that (1) the Department of Elections' has had enormous difficulty in the recent past in simply conducting elections, (2) the Board of Supervisors has not yet approved the $1,600,000 supplemental appropriation (see File 03-0742, Item 9 of this Budget Analyst's June 4, 2003 report to the Finance and Audits Committee) required for a contract with Election Systems & Software (ES&S) to modify the City's existing elections hardware and software systems in order to implement Ranked Choice Voting, and (3) a Ranked Choice Voting method has not yet been certified by the Secretary of State, which is

required prior to the Department implementing Ranked Choice Voting. Given the timing of the ES&S contract provisions, the Budget Analyst notes that the earliest that the Secretary of State would be likely to certify the ES&S Ranked Choice Voting system would be August of 2003, just three months prior to the November of 2003 election.

2. Therefore, at a minimum, the Department's proposed costs should be reduced to account for an approximately three month timeframe from approximately August of 2003, once a Ranked Choice Voting system is certified, until November of 2003, rather than the six month timeframe that is being requested under the proposed supplemental appropriation. The Budget Analyst also notes that the Department is requesting additional funds to pay for existing Department of Elections staff and related expenses to issue press releases and conduct interviews with newspapers ($10,000), issue press releases and conduct interviews with radio and other electronic media ($10,000), attend festivals and events ($20,000), meet with candidates ($20,500), and additional administrative expenses ($158,670), much of which would otherwise continue to be provided by the Department of Elections within their existing budget, whether the subject supplemental appropriation is approved or not. Therefore, such existing personnel costs should be reduced from the proposed supplemental appropriation request. Additionally, as discussed above, the Budget Analyst questions the overall reasonableness, given the magnitude of the amounts included in this supplemental appropriation request and the lack of any supporting documentation for these estimated costs.

3. The Center for Voting and Democracy, a nonprofit organization dedicated to ensuring fair elections and representation, provided Attachment II, which outlines a community education plan for Ranked Choice Voting to be conducted by the Department of Elections in San Francisco at an estimated cost of $594,000, which is $1,822,160 or over 75 percent less than the $2,416,160 that the Department of Elections is currently proposing. According to Mr. John Arntz of the Department of Elections, the proposal by the Center for Voting and Democracy may not provide sufficient funding and

outreach to fully inform the voters of San Francisco about Ranked Choice Voting for the November of 2003 election.

4. Given (a) the concerns identified above regarding the proposed supplemental appropriation, (b) the proposal by the Center for Voting and Democracy and (c) based on subsequent discussions with Mr. Arntz regarding what the Department of Elections considers to be their highest priorities for providing public education on Ranked Choice Voting, the Budget Analyst makes the following recommendations:

Tasks	Amount Proposed in Supplemental	Amount Proposed by Center for Voting and Democracy	Budget Analyst's Recommendation	Budget Analyst's Recommended Reductions from the Supplemental Appropriation Requested Amounts
Citywide Mailing	$692,000	$329,000	$300,000	$392,000
Flyers/Poster	174,520	16,500	26,500	148,020
Press Releases/ Interviews	10,000	0	0	10,000
Paid News Ads	97,786	6,500	0	97,786
Voters Information Pamphlet	24,000	24,000	24,000	0
Radio/TV Paid Ads	259,375	0	0	259,375
Radio & TV Interviews	10,000	0	0	10,000
Web Page	96,500	0	40,500	56,000
Video Production	40,310	0	0	40,310
Public Service Announcements	38,000	48,000	0	38,000
Presentations/ Meetings	149,000	0	74,000	75,000
Community Organizations	331,000	170,000	0	331,000
Candidates "Brown Bag Lunch" Meetings	20,500	0	0	20,500
Informational Booths	170,449	0	0	170,449
RCV Plane Hotline	66,300	0	0	66,300
Street Fairs/ Festivals/Events	20,000	0	0	20,000
Poll Worker Training Session	57,750	0	35,000	22,750
Additional & Miscellaneous	158,670	0	0	158,670
Totals	$2,416,160	$594,000	$500,000	$1,916,160

Therefore, the Budget Analyst recommends that the requested $2,416,160 General Fund supplemental appropriation be reduced by $1,916,160 to $500,000 and that the recommended $500,000 be placed on reserve pending certification approval of the Ranked Choice Voting System by the Secretary of State.

Recommendation: As discussed in Comment No. 4, reduce the requested $2,416,160 supplemental appropriation for public education on Ranked Choice Voting by $1,916,160 to $500,000 and place this $500,000 on reserve, pending certification of the Ranked Choice Voting System by the Secretary of State.

DEPARTMENT OF ELECTIONS

[DRAFT]

RANKED CHOICE VOTING PUBLIC EDUCATION PLAN

November 4, 2003 Municipal Election

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Voice (415) 554-4375; Fax (415) 554-7344; Absentee Fax (415) 554-4372; TDD (415) 554-4386

I. INTRODUCTION

On March 5, 2002, San Francisco voters approved a Charter Amendment (Proposition A) that requires the City to utilize a Ranked Choice Voting ("RCV") method by November 2003 that would eliminate separate runoff elections.

This document describes the San Francisco Department of Election's Outreach and Voter Education Plan for the Ranked Choice Voting process. This plan incorporates mechanisms designed to effectively present and repeat information on RCV in visual (text and image), auditory, and interactive formats.

II. OBJECTIVE

The objective of this Education Plan is to inform voters and the public at large on the process of Ranked Choice Voting and how to correctly mark RCV ballots.

III. MESSAGES

This section outlines the crucial information on RCV that will be communicated to voters and the public. Department staff will use this section as a checklist when disseminating information on RCV.

A. What is RCV?

1. On March 5, 2002, San Francisco voters approved a Charter Amendment that requires the City and County of San Francisco to use RCV for elections for most local offices.
2. RCV *ONLY* applies to eight local offices: Mayor, City Attorney, District Attorney, Public Defender, Sheriff, Assessor-Recorder, Treasurer, and Board of Supervisors.
3. RCV does not cover any state or federal offices.

B. How do Voters Mark RCV Ballots?

1. Each voter will rank a first, second, and third choice among the candidates for each RCV office:
    a. A voter should mark a candidate as first choice.
    b. A voter should mark a separate candidate as second choice.
    c. A voter should mark another candidate as third choice.
2. A voter's second choice should be a different candidate from his or her first choice. A voter's third choice should be a different candidate from his or her first and second choice.

C. How are RCV Votes Counted?

1. The votes are counted in rounds. All first choice votes are counted in the first round.
2. If one candidate receives at least 50% plus one vote of the first choice votes, that candidate wins. If this is the case, the second and third choice votes are not counted.
3. If no candidate receives at least 50% plus one vote, the candidate with the fewest number of the first choice vote will be eliminated. A voter whose first choice candidate is eliminated will have his/her votes reallocated to his/her next choice among the remaining candidates.
4. After the reallocation, the votes are counted again for the remaining candidates. If one of the remaining candidates now has a total of 50% plus one vote, that candidate wins. However, if no remaining candidate has at least 50% plus one vote, the candidate with the fewest number of votes will be eliminated, and that candidate's votes will be reallocated based upon the voter's next choice among the remaining candidates.
5. This reallocation and elimination process will continue until one remaining candidate receives a 50% plus one majority of the remaining votes. That candidate will be the official winner.
6. A voter's second choice vote will be counted only if and when his/her first choice candidate is eliminated.
7. A voter's third choice vote will be counted only if and when his/her first and second choice candidate is eliminated.

IV. MECHANISMS

This section outlines the educational and outreach mechanisms the Department will employ to communicate the above information on RCV to voters and the public. These mechanisms will utilize print and electronic media, as well as presentations, to effectively disseminate the RCV messages. All of the material will be translated in accordance with the Voting Rights Act, Section 203(A).

A. Print

1. **Citywide Mailing**
   The Department will design a comprehensive mailing campaign to reach all registered voters in San Francisco. Using a citywide mailing format, the Department will conduct two mailings, the first commencing in September. The initial mailing will incorporate an RCV-specific flyer. Following the flyer, the Department will mail out an RCV-specific multilingual informational postcards (4" x 6") in October. These postcards will act as follow up reminders prior to Election Day. However, due to its substantial cost, the viability of conducting a citywide mailing depends in part on the financial resources available.

2. **Flyers / Posters**
   In-house development of informational tri-fold pamphlets and posters will play an essential part in reaching the voters of San Francisco. There will be four different

versions of flyers, and each flyer will be reproduced in Chinese, Spanish and Russian. The Department will look for all opportunities to distribute these flyers, including community presentations, street fairs, and festivals. Flyers may also be left in public places such as churches, senior centers, libraries, neighborhood groups, and police stations, where people can help themselves.

The Department will also develop RCV-specific posters for posting in public places such as supermarkets, libraries, police stations, and community centers. The Department will also aim to strategically post them in areas where they will attract a lot of attention, such as BART transits and MUNI buses, as well as stations.

3. **Press Releases and Interviews**
Press releases will be a cost effective way to use the resources of the media to help educate the public about the RCV process. Department staff will be responsible for preparing and submitting press releases as well as participating in interviews.

4. **Paid Newspaper Advertisements**
The Department will produce paid advertisements on RCV for print (Chronicle, Bay Guardian, Examiner, Independent, etc.) dissemination. The Department will also submit targeted paid advertisements in the local ethnic press and other mediums such as the local Yellow Pages (annual cycle beginning in September).

Another tool that will be utilized to reach the public is the monthly/weekly newspapers that individual San Francisco neighborhoods publish. This method may prove to be an effective way to inform the public about RCV, while providing additional election information such as registration and absentee deadlines. Public service announcements can be forwarded to individual neighborhood newspaper agencies such as:

- The San Francisco Neighborhood Newspaper Association, which includes the Richmond Review, Sunset Beacon, New Bernal Journal, New Mission News, Noe Valley Voice, and El Tecolote
- New Bayview News
- Nob Hill Gazette
- Potrero View
- Sing Tao Daily
- Board of Supervisors Weekly Outreach, which includes China Press, Chinese Times, Asian Week, El Mensajero, El Latino, El Reprtero, Bay Area Reporter

5. **Voter Information Pamphlets**
Ranked Choice Voting educational material will be included in the Voter Information Pamphlet (VIP), which is mailed to all registered San Francisco voters prior to each election. The material will highlight all of the RCV messages, focusing in particular on the implementation of RCV for the November 4, 2003 Municipal Election and instructions on how to correctly mark the RCV ballot. The RCV material additionally will be translated for inclusion in the Spanish and Chinese editions of the VIP. Also included in the VIP will be a sample RCV ballot showing the exact layout of the

contests, the choice arrangement, and the candidates as they will appear in the Official Ballot for the election, as well as a reference guide that voters can use to note their respective choices for each RCV contest and take with them to the polls. The VIP, which will also be available at the Department's offices and at the polls, will be mailed in stages to voters as each unique ballot type run is printed from late September to mid-October.

B. Electronic Media

1. **Radio and Television Paid Advertisements**
The Department will produce short programs, 15 seconds to one minute in length, containing information for voters on the RCV process. The Department intends to use cable stations as the primary outlet for radio and television advertising, and in order to maximize the effectiveness of this advertising the Department will need to pay for airtime. To reach people who do not receive television programming via cable, a limited number of local television stations will be employed. Furthermore, in order to reach bilingual communities, the Department will produce the advertisements in several different languages. With the complexities of the media market, the Department may consider hiring a consulting agency that would assist in designing the campaign while ensuring that its effectiveness goes hand in hand with financial responsibility.

2. **Website**
The Department of Elections, in conjunction with the Department of Telecommunications and Information Systems (DTIS), will add a link from the current Department of Election's home page to information for voters regarding RCV. The new RCV website will be designed and structured to include both general and detailed information about Ranked Choice Voting. Features of the website will include instructional video and audio clips, interactive demos on how to correctly mark an RCV ballot, informational slides and PowerPoint presentations, and various pictures, charts, and images relevant to the RCV process. Once produced, the RCV website will require continual updates, support, and maintenance.

3. **Video Production**
The Department will produce a 15-minute to half hour instructional video to educate voters on the concept of RCV. The video will explain how RCV works and instruct voters on how to correctly mark the ballots. SFGTV, the San Francisco government television station, will broadcast this tape. The video screenplay will be designed so that non-English language versions can be easily produced by voice over in other languages. The production of a RCV outreach video, with voice over in multiple languages, will allow for wide public education via distribution through:

- Regular SFGTV programming
- Department of Elections
- Senior residence facilities
- Public libraries
- Schools and colleges
- Local community organizations

4. **Public Service Announcements**
Public Service Announcements are15-second to one-minute programs which can be produced by the Department and SFGTV and delivered to local radio and television stations for broadcast. However, because PSAs are aired at no cost, they are aired at the station's discretion, and it is likely that they will be broadcast at times of low viewership. To increase the possibility that the stations will run the "spots" at more advantageous times, the Department will attempt to utilize public figures to talk about RCV.

C. Presentations

1. **Presentations and Meetings**
There are many opportunities for face-to-face meetings with the public within the framework of existing organizations and events. One fruitful venue for community outreach is presentations to neighborhood meetings. These meetings occur regularly and are well distributed throughout city neighborhoods. Similarly, merchant and professional organizations, senior citizen's residential centers, and community centers also invite speakers to their meetings to discuss community topics such as elections and voting. The Department will also avail itself of outreach opportunities through other private groups, such as rotary clubs, neighborhood associations, churches, and other interest groups.

The in-house development of a PowerPoint presentation will also assist in facilitating RCV outreach. With PowerPoint, the actual process of marking and tabulating the RCV votes can be illustrated to the general public. This RCV presentation can also be added to the City website, e-mailed to interested parties, and aired on SFGTV.

2. **Community Organization Recruitment**
The Department intends to recruit approximately 11 non-profit community organizations, on each of the Supervisoral districts, for their assistance in promoting RCV through a grant proposal program. The recruited community organizations will receive a grant of $25,000.00 per organization to promote RCV. Dedicated Department staff will be needed to draft and submit grant proposals, recruit community organizations, and prepare contracts. Once the organizations are recruited, Department staff will conduct a 4-hour training class for each organization so that they have a thorough understanding of RCV. The organizations will be required to submit regular reports on their progress which the Department will review closely. The Department will require each organization in turn to recruit at least 30 Poll Workers to work on Election Day.

3. **"Candidate Brown Bag" Workshop**
The "Candidate Brown Bag" workshops will provide all candidates running for local offices and their campaigns an opportunity to observe a demonstration on the RCV process and to keep informed of current election events. These workshops will also include information on completing nomination paperwork to become a candidate as well as information on absentee and registration drives.

4. **Information Booths**
The goal of this program will be to provide information regarding RCV to the voters of San Francisco while also training prospective Poll Workers on RCV. In addition to distributing multilingual flyers, a multilingual poster will be prominently displayed explaining the RCV process.

The program will operate as follows:

- The booths will be active for 6 days per week for 7 weeks.
- Each booth will be set up on Monday mornings and taken down on Saturday evenings.
- There will be 4 Poll Workers stationed at each booth.
- A new crew will be assigned every 3 days.
- Each Poll Worker will receive a 2-hour training.
- Each Poll Worker will be paid a $100 stipend.
- An additional staff of 10, working 20 hours a week for 7 weeks, will deliver the equipment and materials to the booths.
- There will be one designated Field Manager visiting the booths throughout the day.
- Another staff of three full time employees working for 3 months will manage and implement the program.

5. **RCV Telephone Hotline**
A dedicated RCV telephone hotline will be set up for all RCV specific calls. These phone lines will be staffed with bilingual employees who will respond to public inquiries regarding RCV. Each of the bilingual staff will be thoroughly trained on the process of RCV and all other related topics.

6. **Street Fairs / Festivals / Events**
Street fairs and festivals, generally starting in June, provide the Department with the opportunity to reach out to the general public and promote RCV. Frequently, multiple street fairs and other events are held at the same time. Therefore, the Department will need additional staff in order to attend overlapping events.

7. **Poll Worker Training**
In order to provide voters with correct and thorough information regarding RCV, the Department must ensure that the 3,500 Poll Workers receive ample training. In addition to regular Poll Worker training classes, the Department will provide a mandatory, dedicated one-hour RCV training session. Approximately 125 such classes will be held, and each Poll Worker will be paid an additional $10 stipend to attend. Each Instructor will be paid a $40 stipend for teaching one class. There will be additional staff necessary (class monitors, office support, equipment delivery) to manage the project. Additional material, such as handouts and revisions to the Election Officer's Manual, will also be necessary. The Department will, however, draw heavily on RCV materials described elsewhere in this report (e.g., RCV flyers, posters, video productions).

V. SEE ATTACHED RCV PUBLIC EDUCATION PLAN TIME LINE

VI. SEE ATTACHED RCV PUBLIC EDUCATION PLAN BUDGET

VI. RCV Public Education Plan
Budget DRAFT

	Mechanism	Detail	Avg. Cost per Detail	No. of Details	UM	Total Cost	No. of Staff *	Staff Cost/hr	Staff hours required	Total Labor Cost	Overall Cost	Total Cost
I.	PRINT											
A.	CityWide Mailing											
		1st Mailing										
		- Postcard Development	$160,000.00	1	batch	$160,000.00					$160,000.00	
		- Postage	$0.37	450000	mails	$166,500.00					$166,500.00	
		2nd Mailing										
		- Postcard Development	$160,000.00	1	batch	$160,000.00					$160,000.00	
		- Postage	$0.37	450000	mails	$166,500.00					$166,500.00	
		Staffing (Preparation)					3	$25.00	160	$12,000.00	$12,000.00	
		Staffing (Implementation)					3	$25.00	360	$27,000.00	$27,000.00	$692,000.00
B.	Flyers/Posters											
		Tri-fold Flyers in 4 Languages	$275.00	60	box	$16,500.00					$16,500.00	
	Printing	Posters - Bus Inside	$2.65	2600	pcs	$6,890.00					$6,890.00	
	Advertising	Muni (800 Bus Inside)	$2,000.00	4	weeks	$8,000.00					$8,000.00	
	Printing	Posters - Bus Tail	$50.00	50	pcs	$2,500.00					$2,500.00	
	Advertising	Muni (50 Bus Tail)	$1,875.00	4	weeks	$7,500.00					$7,500.00	
	Printing	Posters - Bus Side	$100.00	50	pcs	$5,000.00					$5,000.00	
	Advertising	Muni (50 Bus Side)	$2,500.00	4	weeks	$10,000.00					$10,000.00	
	Printing	Posters - SF Bus Shelters	$100.00	120	pcs	$12,000.00					$12,000.00	
	Advertising	SF Bus Shelters (120 units)	$30,000.00	1	mo.	$30,000.00					$30,000.00	
	Printing	Posters - Train Side	$100.00	50	pcs	$5,000.00					$5,000.00	
	Advertising	Muni Metro Rail (Side of Train- 50 units/mo)	$12,500.00	1	mo.	$12,500.00					$12,500.00	
	Printing	Posters - Train Inside	$3.50	180	pcs	$630.00					$630.00	
	Advertising	Muni Metro Rail (Inside of Train-180 units/mo)	$7,000.00	1	mo.	$7,000.00					$7,000.00	
	Printing	Poster - Station Ads	$100.00	50	pcs	$5,000.00					$5,000.00	
	Advertising	BART/Muni Metro Station Ads (50 units)	$2,500.00	4	weeks	$10,000.00					$10,000.00	
	Translations	3 Languages					3	$25.00	80	$6,000.00	$6,000.00	
	Flyers	Staffing (Preparation)					4	$25.00	200	$20,000.00	$20,000.00	
	Posters	Staffing (Preparation)					2	$25.00	200	$10,000.00	$10,000.00	$174,520.00
C.	Press Releases/Interviews											
		Staffing					1	$25.00	400	$10,000.00	$10,000.00	$10,000.00

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VI. RCV Public Education Plan

Budget DRAFT

Mechanism	Detail	Avg. Cost per Detail	No. of Details	UM	Total Cost	No. of Staff *	Staff Cost/hr	Staff hours required	Total Labor Cost	Overall Cost	Total Cost
D.	Paid News Advertisement										
	Paid Ads in S.F. Neighborhood Newspaper Assoc. (1 Spanish Language included)	$1,562.00	16	ads	$24,992.00					$24,992.00	
	SF Chronicle	$18,000.00	1	ads	$18,000.00					$18,000.00	
	Yellow Pages	$0.00	1	ads	$0.00					$0.00	
	Bay Guardian	$3,400.00	6	ads	$20,400.00					$20,400.00	
	S.F. Weekly	$2,000.00	6	ads	$12,000.00					$12,000.00	
	S.F. Independent	$1,919.00	6	ads	$11,514.00					$11,514.00	
	Russian Media	$500.00	4	ads	$2,000.00					$2,000.00	
	* Sing Tao Daily	$720.00	4	ads	$2,880.00					$2,880.00	
	Staffing (Preparation)					2	$25.00	80	$4,000.00	$4,000.00	
	Staffing (Implementation)					2	$25.00	40	$2,000.00	$2,000.00	$97,786.00
E.	Voters Information Phamplet										
	Typesetting, Layout, Assembly, Printout	$5,000.00	4	pgs.	$20,000.00					$20,000.00	
	Staffing (Preparation)					2	$25.00	40	$2,000.00	$2,000.00	
	Staffing (Implementation)					2	$25.00	40	$2,000.00	$2,000.00	$24,000.00

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* **Footnote** - Sing Tao is not included in the free BOS Outreach Advertisement distribution; the papers included are China Press, Chinese Times, Asian Week, El Mensajero, El Latino, El Reportero, Bay View, and Bay Area Reporter.

VI. RCV Public Education Plan
Budget DRAFT

	Mechanism	Detail	Avg. Cost per Detail	No. of Details	UM	Total Cost	No. of Staff *	Staff Cost/hr	Staff hours required	Total Labor Cost	Overall Cost	Total Cost
II.	ELECTRONIC MEDIA											
A.	Radio / TV Paid Advertisements											
		Cable	$75,000.00	1	mo.	$75,000.00					$75,000.00	
		Broadcast	$50,000.00	1	mo.	$50,000.00					$50,000.00	
		Radio	$70,000.00	1	mo.	$70,000.00					$70,000.00	
		Production	$30,000.00	1		$30,000.00					$30,000.00	
		Consultation	$25,000.00	1		$25,000.00					$25,000.00	
		Staffing					1	$25.00	375	$9,375.00	$9,375.00	$259,375.00
B.	Radio / TV Press Releases / Interviews											
		Staffing					1	$25.00	400	$10,000.00	$10,000.00	$10,000.00
C.	WebPages											
		Development	$75,000.00	1	unit	$75,000.00					$75,000.00	
		Monthly Service Fee	$750.00	6	mos.	$4,500.00					$4,500.00	
		Staffing (Preparation)					2	$25.00	240	$12,000.00	$12,000.00	
		Staffing (Implementation)					2	$25.00	100	$5,000.00	$5,000.00	$96,500.00
D.	Video Production											
		Pre-Production	$8,000.00	1	video	$8,000.00					$8,000.00	
		Production	$11,570.00	1	video	$11,570.00					$11,570.00	
		Post-Production	$6,760.00	1	video	$6,760.00					$6,760.00	
		Additional Languages	$2,670.00	4	video	$10,680.00					$10,680.00	
		Duplication	$4.00	200	video	$800.00					$800.00	
		Staffing					1	$25.00	100	$2,500.00	$2,500.00	$40,310.00
E.	Public Service Announcements											
		Pre-Production	$2,500.00	10	video	$25,000.00					$25,000.00	
		Studio Time	$500.00	10	video	$5,000.00					$5,000.00	
		Post-Production	$300.00	10	video	$3,000.00					$3,000.00	
		Staffing					1	$25.00	200	$5,000.00	$5,000.00	$38,000.00

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VI. RCV Public Education Plan
Budget DRAFT

Mechanism	Detail	Avg. Cost per Detail	No. of Details	UM	Total Cost	No. of Staff *	Staff Cost/hr	Staff hours required	Total Labor Cost	Overall Cost	Total Cost
III.	Presentations										
A.	Presentations / Meetings										
	Outreach Workshop (300 Presentations - To assist with language needs and diverse ethnic groups)										
	- Staffing (Preparation)					4	$25.00	600	$60,000.00	$60,000.00	
	- Staffing (Implementation)					4	$25.00	600	$60,000.00	$60,000.00	
	Equipment Purchase										
	- Laptop Computers	$2,000.00	3	units	$6,000.00					$6,000.00	
	- Video Projectors	$5,000.00	3	units	$15,000.00					$15,000.00	
	- Projection Screens	$1,000.00	3	pcs	$3,000.00					$3,000.00	
	Design of PowerPoint Slides (4 Languages)										
	- Staffing (Preparation)					4	$25.00	50	$5,000.00	$5,000.00	$149,000.00
B.	Recruit Community Organizations										
	Organization Grants (11 districts)	$25,000.00	11	dists	$275,000.00					$275,000.00	
	Staffing (Preparation)					3	$25.00	480	$36,000.00	$36,000.00	
	Staffing (Implementation)					1	$25.00	800	$20,000.00	$20,000.00	$331,000.00
C.	Candidates "Brown Bag Lunch" Meetings										
	Campaign & Voters Services Workshop	$500.00	16	mtgs.	$8,000.00					$8,000.00	
	Staffing (Preparation)					2	$25.00	50	$2,500.00	$2,500.00	
	Staffing (Implementation)					4	$25.00	100	$10,000.00	$10,000.00	$20,500.00

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Attachment I
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VI. RCV Public Education Plan
Budget DRAFT

Mechanism	Detail	Avg. Cost per Detail	No. of Details	UM	Total Cost	No. of Staff *	Staff Cost/hr	Staff hours required	Total Labor Cost	Overall Cost	Total Cost
D. Informational Booths											
	Sample Ballots	$1.00	5000	units	$5,000.00					$5,000.00	
	Poll Worker's Stipend	$100.00	672		$67,200.00					$67,200.00	
	Easels	$24.95	15	units	$374.25					$374.25	
	Supplies	$500.00	1		$500.00					$500.00	
	Trainers	$75.00	25	class	$1,875.00					$1,875.00	
	Additional Traininng Cost	$1,500.00	1		$1,500.00					$1,500.00	
	Poll Worker Recruitment					3	$25.00	80	$6,000.00	$6,000.00	
	Field Manager					2	$25.00	280	$14,000.00	$14,000.00	
	Staffing (Preparation)					3	$25.00	520	$39,000.00	$39,000.00	
	Staffing (Implementation)					10	$25.00	140	$35,000.00	$35,000.00	$170,449.25
E. RCV Phone Hotline											
	Phone Tree Setup	$300.00	1		$300.00				$0.00	$300.00	
	Offsite Phone Bank	$3,750.00	8	days	$30,000.00				$0.00	$30,000.00	
	Additional Voter Services Staff (Early Voting Counter)					4	$25.00	320	$32,000.00	$32,000.00	
	Staffing (Preparation)					2	$25.00	40	$2,000.00	$2,000.00	
	Staffing (Implementation)					2	$25.00	40	$2,000.00	$2,000.00	$66,300.00
F. Street Fairs / Festivals / Events											
	Fairs (Booth Rentals)	$300.00	20	units	$6,000.00					$6,000.00	
	Staffing (Preparation)					2	$25.00	80	$4,000.00	$4,000.00	
	Staffing (Implementation)					2	$25.00	200	$10,000.00	$10,000.00	$20,000.00
G. Poll Worker Training Session											
	Poll Worker's Stipend	$10.00	3500	PW	$35,000.00					$35,000.00	
104	Classroom Rental	$15.00	250	hours	$3,750.00					$3,750.00	
	Trainers	$40.00	125	class	$5,000.00					$5,000.00	
	Postage	$1,000.00	1	batch	$1,000.00					$1,000.00	
	Printing	$1,000.00	1	batch	$1,000.00					$1,000.00	
	Staffing					3	$25.00	160	$12,000.00	$12,000.00	$57,750.00

VI. RCV Public Education Plan
Budget DRAFT

Mechanism	Detail	Avg. Cost per Detail	No. of Details	UM	Total Cost	No. of Staff *	Staff Cost/hr	Staff hours required	Total Labor Cost	Overall Cost	Total Cost
Staffing Summary and Additional Expenses											
Additional and Miscellaneous											
	Administrative Cost**										
	- Outreach	$1,060.00	5	staff	$5,300.00					$5,300.00	
	- Election Support	$910.00	3	staff	$2,730.00					$2,730.00	
	- Student Recruitment	$1,060.00	1	staff	$1,060.00					$1,060.00	
	- Campaign Services	$1,060.00	5	staff	$5,300.00					$5,300.00	
	- Training	$910.00	6	staff	$5,460.00					$5,460.00	
	- Publications	$910.00	1	staff	$910.00					$910.00	
	- Information Technology	$910.00	1	staff	$910.00					$910.00	
	Phone Bills	$10,000.00	6	mos.	$60,000.00					$60,000.00	
	Additional Office Equipmt.	$40,000.00	1		$40,000.00					$40,000.00	
	6 Vehicle Rentals/Maint.	$9,000.00	3	mos.	$27,000.00					$27,000.00	
	Misc.	$10,000.00	1		$10,000.00					$10,000.00	$158,670.00
										Grand Total:	$2,416,160.25

Legend:

UM - Unit of measure

* - The Staff number calculations reflects both the dedicated Department staff and additional staff required to fully carry out the Rank Choice Voting Public Education Plan set forth above. The additional staff will work in conjunction with the Department pre-election employee complement throughout the period shown in the preceding Time-Line.

** - Cost of computer setup, telephone, e-mail accounts, etc. per staff ($1060 for 6 mos., $910 for 4 mos., $760 for 2 mos.)

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The Center For Voting And Democracy

www.fairvote.org

Wednesday, May 21, 2003

The Honorable Alix Rosenthal
President, San Francisco Elections Commission
1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, CA 94102

Re: Dept. of Elections Draft Ranked Choice Voting Public Education Plan

Dear President Rosenthal:

As you know, the San Francisco Department of Elections has now formally proposed a Ranked Choice Voter Public Education Plan to comply with its City Charter mandate to: "conduct a voter education campaign to familiarize voters with the ranked-choice or 'instant runoff' method of voting."

We applaud the Department for outlining an ambitious public education outreach plan with varied components designed to inform as many voters as possible about Ranked Choice Voting (RCV). However, given the reality of the difficult budget constraints that San Francisco is facing this year, we also recognize the need to prioritize public education tactics that are cost-effective, efficient, and necessary.

Background

The Center for Voting and Democracy is a nonprofit, nonpartisan research and education organization dedicated to ensuring fair elections and fair representation. We offer comments and suggestions regarding the Department of Elections' Ranked Choice Voter Public Education Plan based on over ten years experience conducting similar community education plans in other places.

About our experience in these matters: Most recently in 2002 the Center for Voting and Democracy conducted a community education program in Texas regarding the use of cumulative voting in more than a dozen towns and cities. We worked closely with Southwest Voter and with organizers and litigators working with the Mexican American Legal Defense and Education Fund (MALDEF) and LULAC. This work involved translating some of the Center's education materials into Spanish, drafting public service announcements for Spanish language radio and advising Latino and black leaders and community organizations and civic leaders. We also assisted in an exit poll study focused on Latinos in Texas jurisdictions using cumulative voting."

We have conducted community education projects in Illinois, Vermont, North Carolina, Georgia, D.C. Metro area, Montgomery County MD, New York City, and San Francisco. For many of these projects we pursued voter education around ranked choice voting. For instance, CVD participated in a project funded by the Rockefeller

Brothers Fund that pursued voter education about RCV in New York City's community school board elections, which involved millions of potential voters.

Organizations and individuals we have worked with and assisted in these projects include the U.S. Department of Justice, New York City election administrators, Illinois Association of Election Administrators, Illinois Municipal League, National League of Cities, League of Women Voters, Common Cause, Vermont Grange, PIRG, ACLU, Common Cause, Lawyers' Committee for Civil Rights, NAACP, NAACP LDF, NOW, Southern Center for Studies in Public Policy, Asian American Legal Defense and Education Fund (AALDEF), Alabama Democratic Conference, Demos, Georgia Rural Urban Summit, MALDEF, Southern Regional Council, Southwest Voter, the Brennan Legal Center, National Asian Pacific American Legal Consortium, Puerto Rican Legal Defense and Education Fund, and more.

In San Francisco we already have developed an alliance of partner organizations to pursue community education about RCV. Groups include Chinese for Affirmative Action, San Francisco ACORN, Northern California Citizenship Project, Mission Housing Development Corporation, Chinese Progressive Association, and the Public Housing Authority. CVD has a long history of coalition work in the city. The March 2002 passage of RCV in San Francisco depended on a community education project among an enormous and diverse coalition of people and organizations, including organized labor (San Francisco Labor Council, SEIU's Joint Council, SEIU Locals 250 and 790, ILWU, and other key unions), business and planning interests (San Francisco Planning and Urban Research Associations), political clubs (Harvey Milk L/G/B/T, Latino, City, and Asian Pacific Democratic Clubs, among others), issue organizations (Tenants Union, Bike Coalition, Sierra Club, Senior Action Network), and good government groups (Common Cause, CALPIRG).

We hope you will consider our analysis and recommendations as you move forward in shaping the final version of the Ranked Choice Voting Public Education Plan.

<u>Analysis</u>

The best components of the Draft Ranked Choice Voter Public Education Plan ("the Plan") include:

1) Substantial funding of community organizations for voter outreach.
2) Focusing on ethnic media through direct voter contact and a series of cost-effective print ads to minimize confusion among language minorities.
3) Maximizing free media attention with dedicated staff organizing press outreach and public service announcements about Ranked Choice Voting.

Our greatest concerns about the Plan are:

a) **The Cost**, given the current budgetary deficits; and
b) **The Message**, because the Plan proposes to deliver a message that is far more complex than the simple RCV public education mandate in the City Charter.

a) **The Cost.** Unfortunately, at $2.4 million the Plan is fairly expensive in these difficult city budget times. It relies heavily on high-end paid media and other tactics that are not particularly cost-effective, such as $29,000 for ads in the San Francisco Chronicle and Independent. In addition, these costs include significant funds for a variety of personnel and operating costs that would likely be "existing" DOE expenses with or without RCV, such as $57,750 for Pollworker Training and $170,500 for staffing Informational Booths at Street Fairs.

b) **The Message: Keep It Simple.** The Plan proposes to communicate 12 different points of information about RCV to every voter, ranging from its history in San Francisco to the fine details of how the elimination and reallocation of votes will occur during the counting process. In reality, the City Charter simply directs the DOE to educate voters about the RCV "method of voting." This should result in a message focused entirely on what voters will see when they look at their ballot, and what voters must do to fully participate – that is, RANK THEIR CHOICES.

Recommendations

While we would support the maximum amount of funding for voter education about Ranked Choice Voting, budget realities make it likely that choices will have to be made. Accordingly, the Final RCV Public Education Plan should prioritize the most cost-effective, efficient, and necessary tactics in the Dept. of Elections proposal.

We urge you to ensure that the Final Plan prioritizes the following:

- ✓ Community Organization grants to fund direct voter contact such as door-to-door, phone banking, and neighborhood meetings, as opposed to funding the design and production of RCV materials, which will likely be duplicative.
- ✓ One citywide mailing to all registered voters.
- ✓ The production of PSAs for radio and television and dedicated media outreach staff to distribute PSAs and organize press events about RCV.
- ✓ Ethnic media print ads in Chinese, Spanish, and Russian newspapers.
- ✓ Tri-fold Flyers in four languages to be produced and widely distributed.
- ✓ A clear, concise explanation of RCV in the Voter Information Pamphlet.

A revised RCV Public Education Plan that includes only these top priority components and costs $594,000 – less than 25% of the Draft Plan – is attached for your reference.

We will of course participate in the upcoming hearings about the RCV Public Education Plan. We are available for any questions, and will attend any meetings to which we are invited to discuss these and other matters. You can contact me at (415) 531-8585 for any additional information.

Sincerely,

Jon Golinger
Center for Voting and Democracy

Cc: All Members, San Francisco Elections Commission
Supervisors Gonzalez, Sandoval, Peskin
John Arntz, Director of Elections

PRIORITY RANKED CHOICE VOTING PUBLIC EDUCATION PLAN
Center for Voting and Democracy 5/21/03

Mechanism	*Detail*	*Avg. Cost per Deta*	*No. of Details*	*Total Cost*	*Overall Cost*	
Community Organization Grants					**$170,000**	
	Organizational grants for direct voter contact work	$5,000 each grant	30 grants	$150,000		
	DOE staff time to implement and oversee grant work	$25/hour	800 hours	$20,000		
Citywide Mailing					**$329,000**	
	Design & Production of one mailer about RCV to all registered voters		450,000	$160,000		
	Postage for mailer		450,000	$166,500		
	DOE staff time to implement	$25/hour	100 hours	$2,500		
PSAs and Earned Media Outreach					**$48,000**	
	Production of video PSAs			$38,000		
	DOE staff time to distribute PSAs and conduct earned media outreach	$25/hour	400 hours	$10,000		
Paid Media					**$6,500**	
	Chinese, Spanish, Russian print ads			$6,500		
Flyers					**$16,500**	
	Production & design of Tri-fold flyers in four languages			$16,500		
Voter Information Pamphlet					**$24,000**	
	Production of RCV specific pages			$20,000		
	DOE staff time to implement	$25/hour	160 hours	$4,000		

PRIORITY RANKED CHOICE VOTING PUBLIC EDUCATION PLAN
Center for Voting and Democracy 5/21/03

OVERALL PRIORITY PLAN COST				*$594,000*	

Items 11 and 12 - Files 03-0794 and 03-0795

Department: Mayor's Office of Economic Development

Item: File 03-0794

Resolution endorsing the City entering into an Exclusive Negotiating Agreement with the San Francisco Museum and Historical Society for the development of the Old Mint.

File 03-0795

Resolution authorizing the City to accept title to the Old Mint pursuant to a deed and programmatic agreement and adopting findings.

Description: The proposed resolutions would authorize the City to:

(a) Accept title for the Old Mint, located at 88 Fifth Street, for the sum of $1.00, from the Federal General Services Administration (File 03-0795); and
(b) Enter into an Exclusive Negotiating Agreement with the San Francisco Museum and Historical Society for the development of the Old Mint (File 03-0794).

The Old Mint was designated as a National Historic Landmark on July 4, 1961 and was included on the National Register of Historic Places on October 15, 1966. The Old Mint, which consists of approximately 75,000 square feet and is located at 88 Fifth Street, was under the jurisdiction of the United States Treasury Department until the building was closed in 1994 and transferred to the United States General Services Administration (GSA).

File 03-0795

Under File 03-0795, the GSA would grant a Deed to the City, which transfers title to the Old Mint to the City. Under the proposed Deed, the City would be required to:

(a) Rehabilitate and preserve the Old Mint in compliance with standards established by the Secretary of the Interior; and
(b) Obtain approval from the California State Historic Preservation Officer for the City's development plans prior to any alterations to the Old Mint.

File 03-0795 also authorizes a Programmatic Agreement between the City, the GSA, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation, which is an independent Federal Agency promoting preservation of National historic resources. Under the Programmatic Agreement, the City would be required to:

(a) Prepare at the City's expense, an Historic Structures report, which identifies the features of the Old Mint that are to be preserved or rehabilitated as part of the Old Mint's National Historic Landmark status (see Comment 1);
(b) Ensure that all physical and structural alterations to the historic features of the Old Mint would be consistent with the standards established by the Secretary of the Interior; and
(c) Retain, at the City's expense, a qualified Historic Preservation Consultant to review any project documents for rehabilitation and preservation of the Old Mint to ensure that the documents comply with the standards established by the Secretary of the Interior, and to monitor construction work (see Comment 1).

<u>File 03-0794</u>

The Mayor's Office of Economic Development (MOED) issued a Request for Proposal (RFP) in April of 2002 to select a developer for the rehabilitation and use of the Old Mint. In January of 2003, the San Francisco Museum and Historical Society, a non-profit corporation, was selected to develop the Old Mint. The San Francisco Museum and Historical Society proposes a mixed-use project that includes a new Museum of the City of San Francisco, the Visitor and Convention Bureau

Information Center, offices for San Francisco Beautiful, a non-profit organization, and retail and restaurant space. MOED negotiated an Exclusive Negotiating Agreement with the San Francisco Museum and Historical Society. According to Mr. Michael Cohen of the City Attorney's Office, the Exclusive Negotiating Agreement does not grant any rights to the San Francisco Museum Historical Society to use or develop the Old Mint prior to Board of Supervisors approval of the Development and Disposition Agreement/Ground Lease between the City and the San Francisco Museum Historical Society (see Comment 3). However, the Exclusive Negotiating Agreement precludes the City from negotiating with any parties other than the San Francisco Museum and Historical Society regarding the development of the Old Mint during the term of the Exclusive Negotiating Agreement. Under the Exclusive Negotiating Agreement the San Francisco Museum and Historical Society would (a) submit Old Mint rehabilitation design plans that comply with the Secretary of Interior's standards, and (b) demonstrate sufficient financial resources, including funding for pre-development and development costs, to complete the rehabilitation and use of the Old Mint.

Under the Exclusive Negotiating Agreement, the MOED and San Francisco Museum and Historical Society will negotiate a Disposition and Development Agreement/Ground Lease. If the MOED and the San Francisco Museum and Historical Society reach agreement, the MOED will submit the Disposition and Development Agreement/Ground Lease to the Board of Supervisors for approval. The Exclusive Negotiating Agreement is for a ten-month term and will become effective upon the Board of Supervisors' adoption of the proposed resolution. The Exclusive Negotiating Agreement may be extended for up to two three-month terms without further approval of the Board of Supervisors.

Under the Exclusive Negotiating Agreement, the San Francisco Museum and Historical Society will:

(a) use good faith efforts to obtain local, State and Federal regulatory approval for development of the project, including approval under the California Environmental Quality Act;
(b) complete all necessary due diligence reviews of the Old Mint, such as hazardous materials and contractor reports;
(c) obtain approval from the State Historic Preservation Officer of conceptual and schematic design plans for the Old Mint;
(d) provide maintenance services during the term of the Exclusive Negotiating Agreement, at the sole cost of the San Francisco Museum and Historical Society, including landscape maintenance, graffiti removal, necessary utilities, pest control, smoke detector and motion sensor monitoring, routine stationary engineering services, and general repairs as needed; and
(e) provide evidence of commitments for the financing of the predevelopment and development of the Old Mint at no cost to the City.

Fiscal Impact: Under the terms of the Exclusive Negotiating Agreement, the San Francisco Museum and Historical Society will be responsible for all costs of obtaining regulatory approvals and maintaining the facility during the term of the Exclusive Negotiating Agreement. Additionally, under the terms of the Exclusive Negotiating Agreement, the San Francisco Museum and Historical Society is responsible for providing evidence of commitments for the financing of the development of the Old Mint, including providing the City with evidence of adequate predevelopment funds. Ms. Hala Hijazi of MOED states that estimated costs to the City total $548,900. Such costs are to be paid by the City during the term of the Exclusive Negotiating Agreement, which are discussed in Comments 1 and 2 below. Ms. Hijazi advises that $548,900 to be paid by the City will be funded from (a) $498,900 in Federal Old Mint Grant funds, approved in the FY 2002-2003 MOED budget, and (b) $50,000 payable by the San Francisco Museum and Historical Society to the City under the terms of the Exclusive Negotiating Agreement.

Comments:

1. As shown in the Attachment, provided by MOED, MOED has already expended $112,020 of the estimated $548,900 in City costs discussed above, as follows:

- $65,000 for the Historic Structures Report, which identifies the historical features of the Old Mint. Ms. Hijazi advises that the Historic Structures Report was prepared by the consultant, the Architectural Resources Group, and was completed in June of 2002.
- $22,000 for a preliminary economic feasibility report, prepared by Bay Area Economics, an urban land development and real estate economics consulting firm, to assess whether the building could be developed with no costs to the City's General Fund.
- $17,900 for MOED's costs for issuing the RFP, including advertising and marketing costs, and other related costs.
- $7,120 for the initial qualified Historic Preservation Consultant work, performed by Carey and Company, a historic preservation architectural firm which meets the Secretary of Interior Professional Qualifications Standards, which evaluated the three developer proposals submitted in response to the MOED's RFP. The Attachment to this report provides details of the RFP process, including which developers received the RFP, the three respondents, the proposals submitted by the three respondents, and the basis of selection of the San Francisco Museum and Historic Society.

2. In addition to the $112,020 in costs already incurred by the City, Ms. Hijazi advises that the MOED projects approximately $436,880 ($548,900 less $112,020) in future costs to the City, as shown in the Attachment and as discussed below.

- $50,000 for an economic consultant to assist in negotiating the terms of the Development and Disposition Agreement and in developing financing agreements for the proposed Old Mint development project.

- $50,000 in additional Historic Preservation Consultant work, to be performed by Carey and Company, to review conceptual and schematic designs presented by the San Francisco Museum and Historical Society and to monitor construction work to assure compliance with the Secretary of Interior's standards for historic preservation.
- $200,000 to reimburse the San Francisco Police Department for security services during the term of the Exclusive Negotiating Agreement.
- $40,000 for general liability insurance.
- $96,880 for City Attorney ($75,000) and MOED ($21,880) salary and other costs associated with the Old Mint project.

3. According to Ms. Hijazi, the MOED anticipates that the Disposition and Development Agreement/Ground Lease for the Old Mint will be submitted to the Board of Supervisors for approval during FY 2003-2004.

Recommendation: Approval of the proposed resolutions is a policy matter for the Board of Supervisors.

OFFICE OF THE MAYOR
SAN FRANCISCO

WILLIE LEWIS BROWN, JR.

To: Severin Campbell, Budget Analyst's Office

From: Hala Hijazi, Mayor's Office of Economic Development

Date: May 27, 2003

Re: Conveyance of Old Mint to the City

As we discussed, the City will incur costs of approximately $548,900 during the pre-development and exclusive negotiations phase during the City's preliminary steps to redevelop the Old Mint. The City has secured $498,900 to pay for consultants, feasibility studies and pre-development security costs. The City will also receive $50,000 from the proposed developer, the San Francisco Museum and Historical Society in a non-refundable Negotiating Fee under the Exclusive Negotiating Agreement. The City may retain and use the Negotiating Fee as it determines, except that the City is required to pay for the cost of the Historic Preservation Consultant's review of the San Francisco Museum and Historical Society's design plans for the Old Mint. As shown on the cost breakdown attached hereto as "Exhibit F," some of these costs relate to the preparation of the Development and Disposition Agreement, and some relate to interim operations and security (including liability insurance) for the period of the Exclusive Negotiating Agreement before final development agreements are in place.

On August 1, 2001, the Mayor established the Task Force to facilitate public involvement and discussion regarding the reuse of the Old Mint. A brief biography of the members of the Task Force, past agendas and minutes can be accessed at www.sfgov.org/sfmint.

The Task Force held numerous public meetings over the course of 13 months as it evaluated the City's acquisition and development options. The Task Force assisted the City with the drafting and issuance of a Request for Proposals ("RFP") and the solicitation of development proposals for the Old Mint. Subsequent to the release of the RFP, the Task Force assisted City Staff with the evaluation process and made recommendations to the Mayor and the Board of Supervisors

regarding responses to the RFP and the overall financial feasibility of rehabilitating the Old Mint.

Specifically, City Staff with the guidance of the Task Force, undertook the following:

BAE's Feasibility Analysis/ Report:

Bay Area Economics ("BAE"), an urban land development and real estate economics consulting firm, prepared a preliminary feasibility analysis to assist the City and the Task Force in understanding the opportunities and issues presented by the potential transfer of the Old Mint from the GSA to the City. The feasibility analysis sought to assess whether the building could be developed through a public/private partnership in a manner that would maximize public use with no or minimal funds from the City's General Fund. BAE's tasks included but were not limited to:

- review of previous studies;
- update construction cost estimates for multiple reuse scenarios;
- conducted an overview of market conditions for office, hotel, museum, and special event venues, including brief case studies of comparable successful projects and review of planned museum projects in the Yerba Buena area;
- BAE modeled five prototype mixed-use development projects and conducted financial feasibility analysis on each;
- BAE identified various sources of funding that the City and/or its partner could pursue to enhance project feasibility.

BAE concluded that each of the five conceptual prototype development projects it evaluated would result in a "feasibility gap" resulting from initial development costs and/or ongoing annual operating costs. However, creative use of historic preservation tax credits, rehabilitation grants, and other forms of non-City financing along with a carefully designed rehabilitation and development program could substantially reduce the estimated costs and improve project financial feasibility.

Issuance of Request for Interest(s) ("RFI"):

Based on BAE's report, in March 2002, the Mayor's Office of Economic Development ("MOED") issued a RFI to assess the interest of for-profit and non-profit organizations in participating in the redevelopment of the Old Mint. MOED received a total of 12 responses to the RFI.

Issuance of the Request for Proposals ("RFP"):

Consequent to the RFI and based in part on the results of BAE's feasibility report, City staff drafted a RFP for the development of the Old Mint. After numerous public hearings, the Task Force authorized issuance of the RFP on April 15, 2002.

On June 11, 2002, MOED issued the RFP for an opportunity to lease, rehabilitate, develop, and operate the Old Mint under a long-term ground lease with specific submittal requirements. The City received a total of (3) proposals after extending once the initial submittal deadline from August 30, 2002 to October 18, 2002.

The Evaluation Process:

A Review Committee of City staff assisted by BAE and Carey & Co., reviewed and analyzed the proposals from the following (3) respondents to the RFP:

1. Destination Club Partners, a for-profit developer, proposes a 38 unit high-end residence club development that would be sold on a fractional ownership (i.e., timeshare) basis, with space set aside on the ground floor for a yet to be defined public use;

2. Landair Project Resources-Urban Initiatives and Northern Real Estate, a for-profit joint venture developer, proposes a mixed-use project anchored by mixed-income rental residential units. Other uses include a numismatic museum that has no identified operator or business plan, and office or retail uses with tenants that are yet to be identified aside from a small coin dealer; and

3. San Francisco Museum and Historical Society, a non-profit organization, proposes a mixed-use project anchored by a new Museum of the City of San Francisco. Other tenants include a relocated Visitor and Convention Bureau Information Center, offices for San Francisco Beautiful, and space for retail and restaurants, including a restaurant by Bradley Ogden.

The Review Committee, based on the proposals, respondents' interviews, and consultants' analysis, ranked the SFMH's proposal higher than the other respondents' proposals because in the final analysis, it offers the greatest potential public benefit to the City.

Exhibit F

**Old Mint Federal Grant Budget
12/01-6/05**

City Pre-development Costs (Cost incurred to date)	Responsible Agency	Budget	Total Grant Amount $498,900 + ENA Deposit ($50,000) = $548,900
Historic Structures Report	ARG	$65,000	
Economic & Market Analysis Phase I	BAE	$22,000	
Marketing & Administrative	MOED	$17,900	
Historic Preservation Consultant Phase I	Carey & Co.	$7,120	
Subtotal			**$112,020**

City Pre-development Costs (From ENA-DDA)			
Economic Consultant supporting DDA	TBD	$50,000	
Historic Preservation Consultant Phase II	Carey & Co.	$50,000	
Security, etc. (2 years)	SFPD	$200,000	
General Liability Insurance (2 years)	TBD	$40,000	
City Attorney's Office (until completion)	City Attorney	$75,000	
Grant Administration (until completion)	MOED	$21,880	
Subtotal			**$436,880**

TOTAL			**$548,900**

Items 13 and 14 - Files 03-0379 and 03-0371

Department: Port Commission (Port)
Real Estate Division

Items: 03-0371 Resolution approving and authorizing an Agreement between the Port and San Francisco Cruise Terminal, LLC for the sale by the Port to San Francisco Cruise Terminal, LLC of approximately 22,000 square feet of real property located at the corner of Beale and Bryant Streets on Seawall Lot 330; approving and authorizing a 66-year Lease with San Francisco Cruise Terminal, LLC for Pier 30-32; adopting findings that the conveyance is consistent with the City's General Plan and eight Priority Policies of City Planning Code Section 101.1; authorizing expenditure of proceeds received under the Sale Agreement, subject to Board of Supervisors appropriation approval, towards the costs of the Brannan Street Wharf and Pier 30-32 Cruise Terminal Project; and authorizing the Port's Executive Director and the City's Director of Property to execute documents, make certain modifications and take certain actions in furtherance of this Resolution.

03-0379 Resolution adopting findings pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, including a statement of overriding considerations, in connection with the proposed mixed-use Cruise Terminal Project, located on Pier 30-32, a condominium tower project on a portion of Seawall Lot 330, and a public open space project in the location of Piers 34 and 36, at the Port.

File 03-0371 **Lease by the Port to San Francisco Cruise Terminal, LLC of Pier 30-32**

Location: Pier 30-32, located at the corner of Bryant Street and the Embarcadero.

Purpose of Lease: The proposed lessee, San Francisco Cruise Terminal, LLC, would develop a two-level Cruise Terminal to accommodate two cruise ships at one time with approximately 195,000 gross square feet for retail and entertainment space, approximately 370,000 gross square feet for office space for maritime and other private

businesses and a garage with 425 parking spaces, as detailed in Attachment I, provided by the Port.

Lessor: City and County of San Francisco through the Port Commission

Lessee: San Francisco Cruise Terminal, LLC

Term of Lease: 66 years, commencing upon the close of escrow on the Lease, which is projected to be in 2005.

No. of Sq. Ft. and Monthly Rental Revenues Payable by San Francisco Cruise Terminal, LLC to the Port: Pier 30-32 contains 619,696 gross square feet. During the construction of the Cruise Terminal Project, the Construction Period Rent payable to the Port would be at an annual rate of $150,000, or $12,500 per month. The Construction Period is projected to begin in 2005 and be completed in 2009. After construction is completed, the Base Rent would be at an annual rate of $850,000 for the 66-year term of the proposed lease, or $70,833.33 per month. This $850,000 Base Rent would be adjusted by the Consumer Price Index (CPI) every five years. In addition to the $850,000 adjusted annual Base Rent payments, San Francisco Cruise Terminal, LLC (SFCT) would pay the Port a Participation Rent equal to 25 percent of the net operating income received by SFCT, on a quarterly basis, beginning on the third anniversary of operations and until the date of the first sale of the Lease or the seventh lease year, whichever occurs first. This Participation Rent would be paid after SFCT receives a three percent quarterly return on the project costs. The Lease requires San Francisco Cruise Terminal, LLC to make its books and records available to the Port, or to any City auditor, or to any auditor or representative designated by the Port. In addition, the Lease requires San Francisco Cruise Terminal, LLC to provide audited financial statements prepared by a certified public accounting firm in accordance with generally accepted accounting principles within 120 days of the expiration of each Lease Year. In the event of a sale of the Lease, the new Lessee would pay the Port a Participation Rent equal to 25 percent of the net income received by the new Lessee, on a quarterly basis, after the Lessee receives a

2.5 percent return on the Net Sale Proceeds. Net Sale Proceeds include the purchase price paid by the new Lessee less the costs of the purchase. The Lease provides that the Port must approve in writing any transfer of the Lease. After the seventh Lease year in the event a sale has not occurred, SFCT would pay the Port a Participation Rent equal to 25 percent of the net operating income received by SFCT, on a quarterly basis, after SFCT receives a 2.5 percent return on the Final Costs for the improvements on Pier 30-32. The estimated cost of the improvements on Pier 30-32 is $261,289,163. As additional rent, the Port will also participate in the Net Sales Proceeds of all sales of the Lease throughout the Lease Term (see Comment No. 5).

Right of Renewal: None.

<u>**File 03-0371**</u> <u>**Sale by the Port for $9,324,000 to San Francisco Cruise Terminal, LLC of Real Property on Seawall Lot 330 for the Development of the Condo Project**</u>

Location: A portion of Seawall Lot 330, located on the corner of Bryant and Beale Streets.

Seller: City and County of San Francisco on behalf of the Port Commission

Buyer: San Francisco Cruise Terminal, LLC (SFCT)

Square feet: Approximately 22,000 square feet of land, currently being used as a parking lot. The parking lot is comprised of the subject 22,000 square feet and an additional approximately 101,956 square feet, totaling 123,956 square feet and has 500 total parking spaces. According to Mr. John Doll of the Port, the entire 123,956 square foot parking lot is projected to result in $495,695 in parking revenue to the Port for FY 2002-2003. Mr. Doll reports that 322 parking spaces will be eliminated by the sale of the 22,000 square feet, but that the Port will be paid $150,000 in 2004 by SFCT for the use of additional space in Seawall Lot 330 for construction space for the Condo Project. Mr. Doll reports that the Port has not determined the future use for the remaining 101,956 square feet of Seawall Lot 330.

Sale Price: $9,000,000 in Initial Land Value Payment and an additional $324,000 in Deferred Land Value to be realized from Sales Proceeds from the sale of the condominiums, or a total of $9,324,000 (see Comment No. 2).

Description: The proposed resolutions would approve and authorize (a) the sale by the Port of 22,000 square feet of real property, located at the corner of Beale and Bryant Streets on Seawall Lot 330, to San Francisco Cruise Terminal, LLC for the Condo Project and (b) a 66-year lease with SFCT for Pier 30-32, located on the Embarcadero near Bryant Street for the Cruise Terminal Project and would adopt the California Environmental Quality Act (CEQA) findings pertaining to the proposed Bryant Street Pier Project, which includes the Cruise Terminal Project on Pier 30-32, the Brannan Street Wharf and the Condo Project on Seawall Lot 330. These projects are described in detail in Attachment I, provided by the Port.

The Lease Agreement with SFCT is for the Cruise Terminal Project, which is a mixed use project that would include a two-level terminal to accommodate two cruise ships at one time to be located on Pier 30-32 that would include approximately 195,000 gross square feet for retail and entertainment space, approximately 370,000 gross square feet for office space for maritime and other private businesses and a garage with 425 parking spaces. The Sale Agreement with SFCT is for the Condo Project on Seawall Lot 330, which would be a 22 story tower with approximately 200,000 gross square feet including 140 condominium units, including 12 percent affordable units, or 17 affordable units, and 140 parking spaces. The Condo Project is described in detail in Attachment I, provided by the Port. The Port will receive rents and other revenues from those projects.

The Brannan Street Wharf would be a 57,000 square foot pile-supported wharf with a waterfront park providing access to the waterfront. The Brannan Street Wharf would be funded by the Port in the amount of $9,000,000 with proceeds from the sale to SFCT of the subject 22,000 square feet of vacant land on Seawall Lot 330 (the additional $324,000 in Deferred Land Value to be realized from Sales Proceeds from the sale of the condominiums would not be used for the Brannan Street Wharf) and with $6,000,000 in Port Capital funds, for a total

estimated project cost of $14,995,794. Attachment II, provided by the Port, is the preliminary budget for estimated Port costs of $14,995,794 for the Brannan Street Wharf.

The estimated construction cost for the Cruise Terminal Project is $261,280,163. The estimated construction cost for the Condo Project is $85,502,582. The Cruise Terminal Project and Condo Project would be funded by San Francisco Cruise Terminal, LLC, which was selected by the Port through a Request for Qualifications and Proposals (RFQ/P) process (See Comment No. 3).

Attachment III, provided by the Port contains a summary of the Port's projected revenues of an estimated $525,402,500 for all rents, including $550,500 for Construction Period Rent, $178,381,000 for Base Rent, $346,321,000 for Participation Rent in accordance with the proposed lease for the Cruise Terminal Project and an additional $150,000 for Construction Period Rent to be realized from renting to SFCT additional space in Seawall Lot 330 for construction space for the Condo Project in accordance with the Sale Agreement. Attachment III includes the $9,000,000 for sale of the 22,000 square feet on Seawall Lot 330, an estimated $20,700,000 to be realized from the Condo Sales (the $20,700,000 includes the $324,000 in Deferred Land Value included in the Sale Agreement for the Condo Project) and an estimated $14,200,000 for the projected revenue from the projected sale of the Lease, for total estimated revenue to the Port of $569,302,500, including the above-noted $525,402,500, over a 68-year period, which includes two years prior to commencement of the subject Lease and the 66-year Lease Term commencing in 2005 (see Comment No. 5). Mr. Doll advises that, although the proposed Lease for Pier 30-32 does not require a sale of the Lease when the property is fully developed, developers of similar projects typically sell the Lease after construction is completed. Attachment I, provided by the Port explains the basis of the projections for revenues under the proposed Lease and Sale Agreements, including all projected revenues over the 66-year term of the lease.

Comments:

1. The Lease Disposition and Development Agreement, between the Port and San Francisco Cruise Terminal, LLC is intended to establish the conditions for the

development of the Cruise Terminal and the Brannan Street Wharf by San Francisco Cruise Terminal, LLC and to state the conditions for the delivery of the Lease for Pier 30-32 and the site to San Francisco Cruise Terminal, LLC by the Port. The Lease Disposition and Development Agreement between the Port and San Francisco Cruise Terminal, LLC, identifies the scope of the development project and includes a schedule of performance, tenants provisions, and other issues related to the development and construction phase of the project. The proposed Lease resolution approves the Lease and only the terms of the Lease Disposition and Development Agreement that are included in the Lease. However the entire Lease Disposition and Development Agreement is not subject to Board of Supervisors approval. The Lease Disposition and Development Agreement was approved by the Port Commission on March 25, 2003 and would become effective when the Port Director signs the Agreement, which Mr. Doll advises would not occur until the Board of Supervisors approves the proposed Lease resolution (File 03-0371). The Lease Disposition and Development Agreement would expire upon the completion of the construction of the Cruise Terminal, which is anticipated to be in approximately 2009.

2. The Sale Agreement for the Condo Project, wherein the Port would sell SFCT 22,000 square feet on Seawall Lot 330, currently being used by the Port as a parking lot, provides that SFCT would distribute the Condo Sales Proceeds as follows: (a) first, SFCT would pay outstanding debt for the amount financed for the Condo Development Costs; (b) second, SFCT would pay the Port for the Deferred Land Value, or $324,000, until fully paid; (c) third, SFCT would pay itself for the Developer's Equity Contribution, defined as the difference between the Mortgage (the amount of the project costs to be financed) and the total Condo Development Costs, until fully paid; (d) fourth, SFCT would pay the Port and SFCT in equal shares until the amount distributed equals a 12.5 percent return on the total Condo Development Costs; and (e) fifth, SFCT would pay the Port all remaining amounts.

3. As stated previously, the developer for the Bryant Street Pier Project, including the Cruise Terminal Project, the Brannan Street Wharf and the Condo Project, San Francisco Cruise Terminal, LLC, was selected through a

Request for Qualifications and Proposals (RFQ/P) process. On June 4, 1999, the Port issued the RFQ/P to develop the Bryant Street Pier Project. Mr. Doll advises that this RFQ/P was advertised in 23 publications including the Wall Street Journal, Urban Land Magazine, the San Francisco Chronicle, and the San Francisco Examiner, and that the RFQ/P was sent to over 240 firms. Mr. Doll advises that the Port received four responses and subsequently, the Port invited three of the four responding firms to submit proposals for development of the Bryant Street Pier Project.

The three firms selected to submit proposals based on qualifications were: (1) Forest City Development, (2) LCOR San Francisco LLC (LCOR), and (3) San Francisco Cruise Terminal LLC (SFCT). Subsequently, Forest City Development informed the Port that it was withdrawing from the RFQ/P process. An analysis of the two remaining proposals from LCOR and SFCT was conducted by the Port's staff and assisted by an outside real estate economics and planning consulting firm, Economics and Planning Systems and an outside hospitality consulting firm, HVS International. The Port ranked the two firms as follows:

	Rank	
Criteria	SFCT	LCOR
Qualifications	1	2
Cruise Terminal Proposal	2	1
Development Concept	1	2
Economic Proposal	1	2
Feasibility	1	2
Community Support	1	2
Overall Ranking	1	2

Attachment I explains the process for selection of the developer, including the criteria for selection, how the firms were scored. On January 11, 2000, the Port staff recommended and the Port Commission selected SFCT, as the developer to enter into an Exclusive Right to Negotiate Agreement for the Bryant Street Pier Project. As a result of that agreement, the Port is now requesting approval of this proposed legislation.

4. Expenditures on the Brannan Street Wharf would be subject to appropriation approval by the Board of Supervisors either through the annual budget or through a separate supplemental appropriation ordinance. The proposed resolution (File 03-0371) states however that "the Board of Supervisors authorizes and urges the Executive Director, the City's Controller, and any other appropriate officers, agents or employees of the City to take any and all steps necessary to accept and expend all proceeds payable to the Port from SFCT under the terms of the Sale Agreement and its exhibits (including the Condo Sale Proceeds and Residual Condo Proceeds as those terms are defined in the Sale Agreement) towards the development of the Brannan Street Wharf and the Pier 30-32 Cruise Terminal Project." However, according to Mr. Harrington, although approval of the proposed resolution would designate the subject revenues for the proposed development project, such revenues would have to be specifically appropriated by the Board of Supervisors, as noted above. Mr. Doll advises that the Port will consult with the Controller to bring a supplemental appropriation ordinance before the Board of Supervisors in the near future to appropriate the funds for the construction of the Brannan Street Wharf and the Cruise Terminal Project. Mr. Doll further advises that the appropriation of the funds is a prerequisite to the Sale Agreement with SFCT for the Condo Project.

5. The Lease for Pier 30-32 does not require a sale of the Lease. The subject Lease for Pier 30-32 provides that in the event of the sale by SFCT to another firm of the Lease for Pier 30-32, including the Cruise Terminal, the retail, entertainment and office space and the parking garage, the Port would receive a portion of the sale price as follows:

- First Sale Occurring within the First Seven Years of the Lease Term – the Port would receive 40 percent of Net Sale Proceeds less the Final Costs for the improvements less SFCT's return from the sale calculated at a 25 percent Internal Rate of Return on SFCT's equity in the Project.
- First Sale Occurring after the First Seven Years of the Lease Term – the Port would receive 15 percent of Net Sale Proceeds less the Final Costs for the improvements.

- All Subsequent Sales – the Port would receive 15 percent of the Net Sale Proceeds less the amount of the Net Sale Proceeds from the previous sale.

6. Attachment I provides a general comparison of the economic terms of the LCOR and SFCT's proposals for the development of the Bryant Street Pier and an explanation of why the economic provisions included in SFCT's proposal were ranked higher than those in LCOR's proposal. Attachment I also describes other alternative uses for the subject properties and how this proposal maximizes economic benefit to the Port and other benefits to the City.

7. The Lease Disposition and Development Agreement between the Port and SFCT, for Pier 30-32 and the Brannan Street Wharf provides that the Port must deliver Pier 30-32 and the Brannan Street Wharf site free of all tenants and occupants before the close of Escrow on the Agreement, except for Red's Java House. The existing Red's Java House would remain in the northwest corner of the site, near the corner of the Embarcadero and Bryant Street. The Budget Analyst requested that the Port provide a list of all current tenants of Pier 30-32 to the Finance and Audits Committee.

8. In accordance with CEQA, the Draft Supplementary Environmental Impact Report (DSEIR) for the Bryant Street Pier Project was published in November of 2001 and subsequently a Final Supplementary Environmental Impact Report (FSEIR) for the Bryant Street Pier Project was certified by the Planning Commission in May of 2002. On May 28, 2002, a non-profit organization, the Bluewater Network, filed an appeal of the Planning Commission's certification of the FSEIR with the Board of Supervisors. In July of 2002 the Board of Supervisors disapproved the certification of the FSEIR and referred the FSEIR to the Planning Department Office of Environmental Review (File 02-1164, Motion M02-100). Mr. Doll states that the FSEIR was subsequently revised in accordance with the request of Board of Supervisors and recertified by the Planning Commission in November of 2002. On December 11, 2002, a non-profit organization, Healthy Waterfront, filed an appeal of the Planning Commission's certification of the revised FSEIR with the Board of Supervisors. The Board of Supervisors affirmed

the certification of the revised SEIR on January 21, 2003 (File 02-2021, Motion M03-8). The Port Commission adopted the final CEQA findings on March 25, 2003. The subject resolution would adopt the CEQA findings.

9. Attachment IV, provided by the Real Estate Division, summarizes the independent appraisal of the approximately 22,000 square feet of land located on Seawall Lot 330 to be sold under the subject Sale Agreement. According to Mr. Steve Legnitto, of the Real Estate Division, the Appraisal Report, prepared by Clifford Associates, found the Market Value of the property to be $9,300,000. As stated previously, under the subject Sale Agreement, the Port would sell the 22,000 square feet of land for $9,324,000, ($424.64 per square foot).

10. As stated previously, the proposed Lease provides that the Base Rent would be adjusted by the CPI every five years. The Budget Analyst recommends that the proposed Lease be amended to provide for annual CPI adjustments to the Base Rent in order to provide for maximum rent revenues to the Port. In addition, the proposed Lease provides that if a sale of the Lease for Pier 30-32 occurs, such a sale would be subject to approval by the Port, but would not be subject to approval by the Board of Supervisors. The Budget Analyst further recommends that the proposed Lease be amended to require Board of Supervisors approval of any sale of the proposed Lease.

Recommendations:

1. Amend the proposed resolution (File 03-0371) to require the Port Commission to amend the Lease to provide for: (a) annual CPI adjustments to the Base Rent and (b) Board of Supervisors approval for any future sale of the subject Lease, as a pre-condition for Board of Supervisors' approval, in accordance with Comment No. 10, above.

2. Approval of the proposed legislation, as amended, is a policy matter for the Board of Supervisors.

MEMORANDUM

March 29, 2003

TO: Harvey Rose
Budget Analyst

FROM: Douglas F. Wong
Executive Director

SUBJECT: Bryant Street Pier Cruise Terminal and Mixed-Use Project

This memorandum is in response to a May 29, 2002 request regarding:

1. An explanation of the criteria for selection of the developer, including the criteria for selection, how the firms were scored and how much weight was given to the amount of revenues to the Port included in the proposals.

2. A comparison of the economic terms of the two firms' proposals, an explanation of why SFCT's was found to be preferred, a description of what other alternative uses would be possible for the subject properties, an explanation of how this proposal maximizes economic benefit to the Port and an explanation why this is the best use.

3. A description of the Cruise Terminal Project, Brannan Street Wharf and Condo Project including uses, square footage, number of parking spaces, number of condos (with number of affordable units) and estimated development and construction costs.

4. An explanation of the projections of revenues under the base case, including all projected revenues over the 66-year term of the lease and an explanation of why the Port projects a sale of the Lease.

1. Developer Selection Process

The Port's primary objective for the Project was to develop a state-of-the-art cruise terminal facility as part of a mixed-use project which provides a focal point on the waterfront on Pier 30-32, mid-way between downtown and PacBell Park. The Port envisions a modern cruise terminal facility with active, public-oriented uses providing a premier gathering place for the Bay Area, the City and the neighborhood.

Source: Port

The staff memorandum to the Port Commission dated January 7, 2000 (Attachment A) summarizes the developer selection process for the Bryant Street Project. The Port Commission approved Resolution No. 99-36 authorizing staff to issue an RFQ/P for the Bryant Street Project. Consistent with the Waterfront Land Use Plan, Port staff convened an Advisory Group to provide input and reached consensus in the Project Goals and Objectives.

The RFQ/P was issued in June 1999. In July, there were four respondents: Forest City Development, LCOR, Urbatec, and SFCT. Port staff, with the assistance of the real estate economics and planning firm of Economic and Planning Systems (EPS), reviewed the submittals and evaluated them based on the qualifications criteria outlined in this RFQ/P (Attachment B, pages 34-35). Based on the evaluations, staff recommended and the Port Commission concurred that the teams led by Forest City, LCOR and SFCT should be invited to submit proposals. In September 1999, Forest City withdrew from the selection process stating that the project was "not consistent with the company's long-term financial goals."

In November 1999, LCOR and SFCT submitted and presented their proposals. Port staff and EPS evaluated the submittals from the two respondents based on the criteria in the request (See Attachment B, pages 36-37). Based on this review, Port staff concluded that 's proposal was the most responsive to the RFP and therefore should be invited to enter into exclusive negotiations with Port. The results of the developer ranking and evaluation are shown on pages 16-18 of Attachment B. With respect to the economic proposal (page 18), SFCT offered more total rent over the first twenty years of the Lease and proposed a CPI increase with no cap. LCOR offered a higher guaranteed minimum rent, but stated that this would be affected by the size of the hotel. On this basis, SFCT was rated more favorably. On January 11, 2000, the Port Commission selected SFCT and authorized staff to enter into exclusive negotiations for the development of the Bryant Street Project.

2. Use Program and Maximization of Economic Benefits

The explanation of allowable uses on public trust property and brief history of negotiations is excerpted below from the staff memorandum to the Port Commission dated March 19, 2003 (Attachment 3, pages 4-5). As described below, Port staff believes that the uses envisioned in this project are fully maximized given the constraints of AB 1389. SFCT did consider hotel and apartment alternatives as potential uses on SWL 330. SFCT concluded and EPS verified that both alternatives did not maximize potential revenues nor satisfy minimum developer returns.

As originally proposed by SFCT, the Project included a two berth cruise terminal, commercial retail, office, parking and open space on Piers 30-32 and a 400 room hotel and 11 time share units on SWL 330. After conducting extensive due diligence, including physical and engineering investigations of Piers 30-32, SFCT determined that the cost of seismically retrofitting the pier exceeded their original estimates by more than $40 million. In order to make the Cruise Terminal Project economically feasible, SFCT proposed increasing the amount of office space on Piers 30-32. In addition, in response to both community and market concerns, SFCT proposed developing SWL 330 with residential condominiums as an alternative to the hotel and time-share units.

SFCT and Port staff worked with the respective staffs of the State Lands Commission ("SLC"), BCDC, and the Attorney's General's Office to address public trust issues raised by the inclusion of general office and certain neighborhood-using, non-trust retail uses. In August, 2001, SLC staff informed the Port that the authorization of the use program would require action by the State Legislature.

In September 2001, the State Legislature passed legislation, known as AB 1389, sponsored by Assemblyman Kevin Shelley. The Governor signed AB 1389 in October 2001. Among other items, AB 1389: 1) allows 300,000 leasable square feet of office space on Piers 30-32 and allows an additional 25,000 square feet in the cruise terminal facility for no longer than 14 years, converting to trust use at that time or sooner if needed for cruise terminal expansion; and 2) allows a limited amount of non-trust retail (i.e., there must be a greater amount of trust-consistent retail and the ratio of trust to non-trust retail must be at least 40% of total office leasable space).

AB 1389 also accelerates the timing for the completion of the Brannan Street Wharf, as identified in the BCDC Special Area Plan. With review by BCDC, the Port must approve the final design concept for the Brannan Street Wharf prior to the submittal of a major permit application to BCDC, encumber funds for the completion of the Brannan Street Wharf, place funds in a segregated account prior to issuance of a BCDC permit, construct the northern portion of the Brannan Street Wharf contemporaneously with the Piers 30-32 project, and remove Pier 36 and complete the Brannan Street Wharf no later than five years after the start of construction of the Piers 30-32 project. AB 1389 thus establishes limits on the amount of revenue generating uses on Pier 30-32, and the use program proposed by SFCT will built the development in accordance to AB 1389.

Although AB 1389 resolved the use issues for Piers 30-32, the Port expressed a desire to retain ownership of as much of SWL 330 as possible. SFCT responded with a two-phased project that would allow for the sale and development of the Condo Site, with proceeds supporting the subsequent construction of the Cruise Terminal Project and the Brannan Street Wharf. The 22,000 square foot Condo site on SWL 330 was approved by Clifford & Associates who concluded that its proposed development with a 22-story condo tower constituted the "highest and best use" of this parcel. This appraisal defined "highest and best use" as that use which results in the highest land value.

SFCT and Port staffs have continued worked with SLC staff to address public trust issues raised by the residential component on SWL 330. The parties have conceptually agreed on an approach that would use existing legislative authority to remove the public trust designation from a portion of SWL 330, and place the trust designation on another site of equal value. A proposed receiver site for the public trust is a portion of property owned by the Port adjacent to Pier 80, commonly known as the "Western Pacific Parcel," but does not include the parcel occupied by MUNI. Upon approval of the trust exchange by the SLC, the Port would be able to convey the Condo Site to SFCT for development of the Condo Project.

3. Project Description

The project description below is excerpted from the staff memorandum to the Port Commission dated March 19, 2003 (Attachment 3, pages 7-10):

A. Cruise Terminal Project on Piers 30-32

The Pier 30-32 program analyzed under the Preferred Alternative and proposed under the Current Project includes a partial reconfiguration and structural upgrade of the Pier 30-32 structure, upon which would be constructed a new cruise terminal, a series of retail and office buildings, 425 parking spaces, and accessory open spaces. A berthing area for boats would be constructed adjacent to the pier. This development would include a collection of buildings of varying sizes constructed on the pier deck and oriented around a central lagoon. The elements of this component, as proposed under the Preferred Alternative, are as follows:

1. Cruise Terminal

Construction of the new James R. Herman International Cruise Terminal, a two-level, 100,000 gross square-foot (gsf) structure that would serve as San Francisco's main terminal servicing cruise ships calling at the Port. Approximately 20,000-50,000 gsf of the terminal's space would be available to the public for civic and special events during the off-season, when ships are not in port. The terminal, to be located at the northeastern corner of the pier, would be primarily 40 feet tall, with an unoccupied architectural element of the terminal roof rising to a height of approximately 88 feet. The terminal would be served by an approximately 850-foot long berth along the pier's northern edge and a 1,000-foot long berth along the pier's eastern edge (created by a 365-foot long and maximum 50-foot wide southern extension of the existing pier). Maintenance dredging would be required to provide adequate depth at the northern berth; the eastern berth would require minimal maintenance dredging. The berths and terminal would be designed to accommodate two cruise ships simultaneously.

Passengers and visitors to the terminal would enter on the first level via an atrium on the building's southern side, then take escalators to the second level for ticketing and boarding. The terminal's ground level would be devoted primarily to terminal operations and ship servicing, while the second level would function as the primary public space and would offer expansive views of the bay through floor-to-ceiling north and east facing windows.

The new cruise terminal would be expected to serve approximately 97 calls in 2010, and about 107 calls by the year 2020.

2. Retail/Entertainment

Approximately 195,000 gsf of retail/entertainment space would be situated throughout the pier, including a grocery store, restaurants, a multi-screen cinema and a variety of other retail spaces along either side of the pedestrian walkways and along the lagoon.

3. Commercial Office

A total of approximately 370,000 gsf (325,000 net square feet) of office space for maritime and other private business would be provided on the second and third levels of the buildings on the pier, including part of the terminal building. The buildings would be two and three stories in height, and the size and configuration of each of the floor plates would vary.

4. *Parking and Circulation*

The vehicular access entry/exit point for the pier would be from The Embarcadero at its intersection with Bryant Street. This entry/exit would provide access to the four (4) story, 425 space parking garage, which would be situated immediately on the right side after entry. Further along the access road would be a taxi drop off point and also coach parking. The road would end with a turning circle at the southern end of the terminal. A total of nine truck loading spaces would be provided.

5. *Open Space/Public Access Amenities*

The open space program for the pier would include plazas, terraces, aprons, and a lagoon. Landscaped terraces would be located on the second level, one to the south of the terminal near the eastern edge of the pier, one to the north of the terminal near the northern edge of the pier and one situated above the north end of the lagoon. Providing perimeter access to the entire pier would be 50-foot wide berthing aprons that would surround and extend beyond the terminal on the north and eastern sides. The aprons would generally be open to the public, but would be closed for safety purposes when ships are in port. A large lagoon would be created near the center of the pier, creating a focal point from which most pier buildings would be oriented and have access. An apron/walkway of approximately 30 feet in width would surround the lagoon. Berths will be provided for water taxis, recreational boats and possibly excursion vessels or ferries.

6. *Red's Java House*

The existing Red's Java House restaurant would remain at the northwest corner of Piers 30-32.

7. *Pier Seismic and Structural Upgrade*

Where required, the existing concrete piles would be repaired, which would involve the removal of marine growth and loose materials, installation of new reinforcing steel around the exterior of the pile, securing formwork around the pile, and then pumping of a cement-based grout (from a machine on the pier deck) into the formwork. Pieces of the pier deck would be removed to create the lagoon and to allow for the installation of new piles. New concrete piles would be driven for the pier extension. A new concrete deck would be installed atop the existing deck and on a timber and steel formwork for the pier extension. No net increase in the water area covered by pile-supported structures would occur.

B. Condo Project on SWL 330 - Residential Program

The Condo Site, as shown Attachment 1 hereto, would be sold to SFCT for development of the Condo Project. The Port would retain ownership of the balance of SWL 330 for future development. The Condo Project would include the construction of approximately 140 condominium units, with approximately 140 parking spaces, located in three levels above grade. Entry to the parking garage would remain on Beale Street. The main entry to the building would be on the first level. The building would be approximately 22 stories and 220 feet tall. The building would contain communal facilities, including a swimming pool, concierge and gym, with common open space at the podium level. In order to enhance the

residential nature of the project and the pedestrian frontage, staff of the Planning Department has requested that the Condo Project be serviced by on-street loading, and that an off-street loading bay not be included in plans for the condo tower.

SFCT will undertake an interim perimeter landscaping plan for the balance of SWL 330. This will allow the lot to continue as a revenue-generating parking lot. SFCT will have the right to use a small portion of the balance of SWL 330 for construction staging (for which it will pay to the Port the then current market rental value per square foot). The Port will retain ownership of the balance of SWL 330 and retain all development rights. SFCT is obligated to prepare a Consolidated Plan for the entirety of SWL 330. Such plan will indicate building envelope, massing and height on the entire SWL 330 consistent with the certified FSEIR.

C. Brannan Street Wharf

As shown in Attachment 2, the Brannan Street Wharf would involve removal of Pier 36 (91,845 sq. ft.), located immediately to the south of Pier 30-32, removal or repair of portions of marginal wharf and construction of new pile supported wharf area to create the Brannan Street Wharf. The Brannan Street Wharf would be approximately 600 feet long (parallel to The Embarcadero) and 95 feet wide. As called for in the BCDC's *San Francisco Waterfront Special Area Plan* (July, 2000) and the Port's Waterfront Plan (as amended July, 2000), the Brannan Street Wharf would be at least 57,000 square feet.

The Brannan Street Wharf would provide a major public open space that would reflect the character and needs of the adjacent South Beach neighborhood and provide access to the waterfront for residents and visitors to the area, establish a unique activity center, provide a respite from adjacent intensively developed areas, accommodate a variety of passive recreational activities, and serve as both a local and regional destination. Under the LDDA, SFCT would construct the Brannan Street Wharf.

D. Project Budget

The budget for each of the project components is estimated as follows:

Table A

	Estimated Project Cost (in millions)	
Condo Tower		$85.5
Piers 30-32		
Pier Upgrade	$56.6	
Office, Retail & Parking	$147.5	
Cruise Terminal	$42.1	
Subtotal		$246.2
Brannan Street Wharf		$15.0
Total		$346.7

4. Port Revenue Projections

The revenue projections below are excerpted from the staff memorandum to the Port Commission dated March 19, 2003 (Attachment 3, pages 20-21). On May 27, 2003, Port staff submitted a 66-year Port lease revenue projection to the Budget Analyst. As shown below, EPS and the Port assume a periodic sale of the Pier 30-32 lease.

"Economic Planning Systems, Inc., the Port's real estate and financial consultant, has evaluated the proposed Project and has projected the potential returns to the Port through 2020, which are summarized in Table B below. This analysis considered a Base Case, plus two Alternatives.

Table B: Total Port Returns through 2020 (in millions)

	Base Case	Reduced Condo Sales	Increased Office Rents
Rent to Port			
Construction Period	$0.7	$0.7	$0.7
Base Rent	$13.7	$13.7	$13.7
Participation Rent	$9.4	$9.4	$10.1
Total Rent	**$23.8**	**$23.8**	**$24.5**
Sales Proceeds to Port			
Land Price @COE	$ 9.0	$9.0	$9.0
Deferred Land Sale	$0.3	$0.3	$0.3
Condo Sales	$20.4	$8.4	$20.4
Subtotal	**$29.7**	**$17.7**	**$29.7**
Pier 30-32	$14.2	$14.2	$22.1
Total Sales Proceeds	**$43.9**	**$31.9**	**$51.8**

1. *Base Case*

The Base Case of Port Returns is shown in Attachment 6. The Base Case assumes two key factors: a) continuing strength in waterfront condo sales prices, and b) improvement in office market demand.

The Base Case assumes construction of 137 condo units sold for an average price of $755 per square foot. Market analysis has indicated that this proposed pricing scheme is reasonable because of the Condo Project's superior waterfront location. Given the range of the number of units under the Base Case, the Port should receive $0.3 million in deferred land payments, plus an additional $20.4 million from the sale of residual condominium units. This would be in addition to the initial land sales payment of $9.0 million.

The Base Case assumes a rent of $43 NNN (2003 dollars) per square foot. In the Base Case scenario, the Port would receive the annual Base Rent of $850,000 (adjusting for inflation). Participation Rent would begin in 2012. By 2020, the Base and Participation Rent is

estimated to be $3.4 million. If a sale occurs in 2020, the Port's participation in Net Sales Proceeds is projected to be $14.2 million.

Ultimately, the timing of the Piers 30-32 component is dependent on the need for new office space. Port staff has reviewed office market forecasts provided by SFCT and other literature regarding San Francisco real estate market forecasts. Based on these forecasts, Port staff agrees with SFCT that the demand for new office should be adequate within the 2006 to 2008 period to make the development of Cruise Terminal Project feasible.

2. *Reduced Condo Sales Alternative*

There is a risk that that prevailing condominium values may decrease when the condos are available for sale in 2005. In the event that there is a 15% decrease in condo sales resulting in an average sales price of $645 per square foot, the Port would receive approximately $8.7 million (in addition to the $9.0 million from the initial land sale). Even if this reduced condo sales scenario were to occur, SFCT has demonstrated to Port staff that it could still proceed with the Cruise Terminal Project and achieve reasonable returns if there is demand for office space.

3. *Increased Office Rents Alternative*

Port staff believes that there is potential for office rents to increase from $33 NNN per square foot assumed in the Base Coase to $50 NNN (2003 dollars) per square foot by the time the Project is available for lease. In this increased office rent scenario, the Port could participate in a First Sale in 2010 and receive $6.4 million. The combined Base and Participation Rent to the Port in 2020 would be $3.6 million. If a subsequent Sale occurs in 2020, then the Port would participate and receive an additional $15.7 million in net sale proceeds."

Prepared by
John Doll
Project Manager

Attachments:
A. Memorandum to Port Commission (January 7, 2000)
B. Request for Qualifications and Proposals for the Bryant Street Pier Project (June 4, 1999)
C. Memorandum to Port Commission (March 19, 2003)

Attachment 11 - Preliminary Budgeted BSW Costs		
Description	Percentage	Total
	%	$
Hard Costs		
Construction Cost		11,103,000
Subcontractor bonds	1	111,030
General Conditions	6	672,842
Contractors Fee	3	356,606
General Liabilty	0.78	95,499
Gross Reciepts Tax	0.3	37,017
Sub-Total		*12,375,994*
Design Costs		
Design Estimate	7	866,320
Project Management Services and Fee	3	371,280
Port - staff time and consultant expenses	n/a	50,000
Sub-Total		*13,663,593*
Contingency	9.75	1,332,200
Total		***14,995,794***

Summary of Port Returns
Base Case

Item	Total Through 2071	2003	2004	2005	2006	2007	2008	2009	2010
Rent to Port									
Construction Period Rent	700,500	0	150,000	150,000	150,000	150,000	100,500	0	0
Base Rent	178,381,000	0	0	0	0	0	281,000	850,000	850,000
Participation Rent	346,321,000	0	0	0	0	0	0	0	0
Total Rent	525,402,500	0	150,000	150,000	150,000	150,000	381,500	850,000	850,000
Sales Proceeds to Port									
SWL Land Payment @ COE	9,000,000	9,000,000	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	20,700,000	0	0	20,700,000	0	0	0	0	0
Subtotal Seawall Lot/Condos	29,700,000	9,000,000	0	20,700,000	0	0	0	0	0
Pier 30/32	14,200,000	0	0	0	0	0	0	0	0
Total Sales Proceeds	43,900,000	9,000,000	0	20,700,000	0	0	0	0	0

Base Case assumes: office rents	$43	NNN (2003$)
condo sales prices	$755	/sq.ft. avg. 1,100 sf unit (2003$) including 12% affordable units
retail rents	$31	NNN (2003$)
cruise calls	95	cruise ship calls in 2009

Note: only one subsequent sale is assumed, in 2020.

Participation rent growth assumed to stablize at a more conservative rate of 4% annually after 2030.

Summary of Port Returns
Base Case

Item	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Rent to Port										
Construction Period Rent	0	0	0	0	0	0	0	0	0	0
Base Rent	850,000	850,000	1,177,000	1,177,000	1,177,000	1,177,000	1,177,000	1,364,000	1,364,000	1,364,000
Participation Rent	0	162,000	276,000	565,000	773,000	1,085,000	1,305,000	1,486,000	1,719,000	2,072,000
Total Rent	850,000	1,012,000	1,453,000	1,742,000	1,950,000	2,262,000	2,482,000	2,850,000	3,083,000	3,436,000
Sales Proceeds to Port										
SWL Land Payment @ COE	0	0	0	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	0	0	0	0	0	0	0	0	0	0
Subtotal Seawall Lot/Condos	0	0	0	0	0	0	0	0	0	0
Pier 30/32	0	0	0	0	0	0	0	0	0	14,200,000
Total Sales Proceeds	0	0	0	0	0	0	0	0	0	14,200,000

Summary of Port Returns
Base Case

Item	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Rent to Port										
Construction Period Rent	0	0	0	0	0	0	0	0	0	0
Base Rent	1,364,000	1,364,000	1,581,000	1,581,000	1,581,000	1,581,000	1,581,000	1,833,000	1,833,000	1,833,000
Participation Rent	0	217,000	425,000	696,000	1,103,000	1,390,000	1,685,000	1,926,000	2,239,000	2,709,000
Total Rent	1,364,000	1,581,000	2,006,000	2,277,000	2,684,000	2,971,000	3,266,000	3,759,000	4,072,000	4,542,000
Sales Proceeds to Port										
SWL Land Payment @ COE	0	0	0	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	0	0	0	0	0	0	0	0	0	0
Subtotal Seawall Lot/Condos	0	0	0	0	0	0	0	0	0	0
Pier 30/32	0	0	0	0	0	0	0	0	0	0
Total Sales Proceeds	0	0	0	0	0	0	0	0	0	0

Summary of Port Returns
Base Case

Item	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
Rent to Port										
Construction Period Rent	0	0	0	0	0	0	0	0	0	0
Base Rent	1,833,000	1,833,000	2,125,000	2,125,000	2,125,000	2,125,000	2,125,000	2,464,000	2,464,000	2,464,000
Participation Rent	3,041,000	3,383,000	3,518,000	3,659,000	3,805,000	3,957,000	4,116,000	4,280,000	4,451,000	4,630,000
Total Rent	4,874,000	5,216,000	5,643,000	5,784,000	5,930,000	6,082,000	6,241,000	6,744,000	6,915,000	7,094,000
Sales Proceeds to Port										
SWL Land Payment @ COE	0	0	0	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	0	0	0	0	0	0	0	0	0	0
Subtotal Seawall Lot/Condos	0	0	0	0	0	0	0	0	0	0
Pier 30/32	0	0	0	0	0	0	0	0	0	0
Total Sales Proceeds	0	0	0	0	0	0	0	0	0	0

Summary of Port Returns
Base Case

Item	2041	2042	2043	2044	2045	2046	2047	2048	2049
Rent to Port									
Construction Period Rent	0	0	0	0	0	0	0	0	0
Base Rent	2,464,000	2,464,000	2,856,000	2,856,000	2,856,000	2,856,000	2,856,000	3,311,000	3,311,000
Participation Rent	4,815,000	5,007,000	5,208,000	5,416,000	5,632,000	5,858,000	6,092,000	6,336,000	6,589,000
Total Rent	7,279,000	7,471,000	8,064,000	8,272,000	8,488,000	8,714,000	8,948,000	9,647,000	9,900,000
Sales Proceeds to Port									
SWL Land Payment @ COE	0	0	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	0	0	0	0	0	0	0	0	0
Subtotal Seawall Lot/Condos	0	0	0	0	0	0	0	0	0
Pier 30/32	0	0	0	0	0	0	0	0	0
Total Sales Proceeds	0	0	0	0	0	0	0	0	0

Summary of Port Returns
Base Case

Item	2050	2051	2052	2053	2054	2055	2056	2057	2058
Rent to Port									
Construction Period Rent	0	0	0	0	0	0	0	0	0
Base Rent	3,311,000	3,311,000	3,311,000	3,838,000	3,838,000	3,838,000	3,838,000	3,838,000	4,449,000
Participation Rent	6,853,000	7,127,000	7,412,000	7,708,000	8,017,000	8,337,000	8,671,000	9,018,000	9,379,000
Total Rent	10,164,000	10,438,000	10,723,000	11,546,000	11,855,000	12,175,000	12,509,000	12,856,000	13,828,000
Sales Proceeds to Port									
SWL Land Payment @ COE	0	0	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	0	0	0	0	0	0	0	0	0
Subtotal Seawall Lot/Condos	0	0	0	0	0	0	0	0	0
Pier 30/32	0	0	0	0	0	0	0	0	0
Total Sales Proceeds	0	0	0	0	0	0	0	0	0

Summary of Port Returns
Base Case

Item	2059	2060	2061	2062	2063	2064	2065	2066	2067
Rent to Port									
Construction Period Rent	0	0	0	0	0	0	0	0	0
Base Rent	4,449,000	4,449,000	4,449,000	4,449,000	5,158,000	5,158,000	5,158,000	5,158,000	5,158,000
Participation Rent	9,754,000	10,144,000	10,550,000	10,972,000	11,410,000	11,867,000	12,341,000	12,835,000	13,349,000
Total Rent	14,203,000	14,593,000	14,999,000	15,421,000	16,568,000	17,025,000	17,499,000	17,993,000	18,507,000
Sales Proceeds to Port									
SWL Land Payment @ COE	0	0	0	0	0	0	0	0	0
Condo Sales (inc. deferred land pmt.)	0	0	0	0	0	0	0	0	0
Subtotal Seawall Lot/Condos	0	0	0	0	0	0	0	0	0
Pier 30/32	0	0	0	0	0	0	0	0	0
Total Sales Proceeds	0	0	0	0	0	0	0	0	0

Summary of Port Returns
Base Case

Item	2068	2069	2070	2071
Rent to Port				
Construction Period Rent	0	0	0	0
Base Rent	5,980,000	5,980,000	5,980,000	5,980,000
Participation Rent	13,882,000	14,438,000	15,015,000	15,616,000
Total Rent	19,862,000	20,418,000	20,995,000	21,596,000
Sales Proceeds to Port				
SWL Land Payment @ COE	0	0	0	0
Condo Sales (inc. deferred land pmt.)	0	0	0	0
Subtotal Seawall Lot/Condos	0	0	0	0
Pier 30/32	0	0	0	0
Total Sales Proceeds	0	0	0	0

City and County of San Francisco

Real Estate Division
Administrative Services Department

March 18, 2003

Doug Wong
Executive Director
Port of San Francisco
Pier 1
San Francisco, CA 94111

Re: Appraisal of .5-acre portion of Seawall Lot 330

Dear Mr. Wong:

This letter is to confirm that an independent appraisal to estimate the Market Value of the Fee Simple Interest in a .5 acre portion of Seawall Lot 330, located at Bryant and the Embarcadero in the City of San Francisco, was prepared by Clifford Associates for the San Francisco Real Estate Department in February 2003.

The subject property encompasses only the northwest portion of the triangular Seawall Lot 330. For purposes of the analysis, the appraisal was based on an area of approximately .5 acre or 22,000 square feet that is designated for development of 137 units within a 20-story tower structure. Overall, the proposed development reflects a density of 274 units/acre.

Based upon the analysis in the appraisal report, the estimated Market Value of the Fee Simple Interest in the subject property is **Nine Million Three Hundred Thousand Dollars ($9,300,000).**

Copies of the appraisal report, entitled *Appraisal Report, Development Site Seawall Lot 330, Bryant St./The Embarcadero, San Francisco, CA,* are on file with the Department of Real Estate and the Port of San Francisco.

Sincerely,

Steve Legnitto

for Marc McDonald
Director of Property

cvh:\sw330cliffordltr

Item 15 – 03-0605

Department: Airport

Item: Resolution approving and authorizing the execution of Modification No. 9 to the Lease and Use Agreement L-82-0120 with US Airways, Inc., to reduce terminal space in Terminal 1, formerly known as the South Terminal, of San Francisco International Airport.

Lessor: City and County of San Francisco

Lessee: US Airways, Inc.

Term of Existing Lease: 30 years, from July 1, 1981 through June 30, 2011, with no option to renew.

Effective Date Of Proposed Modification No. 9: Date upon which US Airways has satisfied all of the following conditions:

- The Airport Commission and the Board of Supervisors has approved Modification No. 9;
- US Airways has secured approval of Modification No. 9 from the bankruptcy court (see Description below);
- US Airways has assumed the Lease and Use Agreement between US Airways and the Airport, as modified by the proposed Modification No. 9, as part of the bankruptcy proceedings (see Description below);
- US Airways has provided all security deposits and bonds as required by the existing Lease and Use Agreement and all other agreements between the Airport and US Airways (see Comment No. 3)
- The Airport has received from US Airways or the bonding company, Travelers Casualty and Surety Company of America, all pre-bankruptcy amounts outstanding under the existing Agreement and all other agreements between the City and US Airways;
- The Airport has confirmed that US Airways surrendered the subject 11,595 square feet of space which US Airways presently leases in Terminal 1.

According to the terms of the proposed Modification No. 9, if the conditions above are not achieved by August 29, 2003, then Modification No. 9 to the Agreement will be null and void.

Description: Under the existing Lease and Use Agreement No. L-82-0120 (Agreement) dated July 1, 1981, by and between the City and County of San Francisco through its Airport and US Airways, Inc, as previously amended and approved by the Board of Supervisors, US Airways currently leases from the Airport approximately 25,872 square feet of exclusive use space and 34,178 square feet of joint use space in Terminal 1, formerly known as the South Terminal. According to Ms. Diane Artz of the Airport, joint use space is defined as airline rental space in a facility owned by the Airport which is leased to more than one airline for the shared use of all airlines sharing that space. Ms. Artz states that exclusive use space is defined as airline rental space leased to a single airline for its exclusive use. The last amendment to the Lease was approved by the Board of Supervisors on May 21, 1996 (File 27-96-7), to reduce the square footage of the exclusive use space leased by US Airways by 19,263 square feet, from 45,135 square feet to the current amount of exclusive use space of 25,872 square feet, in order to accommodate the Airport's construction of the new Boarding Area "A" at the new International Terminal.

According to Ms. Artz, on August 11, 2002, US Airways filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code. On March 18, 2003, the U.S. Bankruptcy Court confirmed US Airways' reorganization plan. Ms. Artz states that under Chapter 11, US Airways is operating as a debtor-in-possession, defined as a bankrupt entity in Chapter 11 re-organization that is able to continue management under its own control instead of operating under the control of the Court-appointed trustee. Ms. Artz further states that since the August 11, 2002 bankruptcy filing date, as required under Chapter 11, U.S. Airlines has been operating under the terms and conditions of the existing Lease and Use Agreement with the Airport, and has to date made all post bankruptcy payments due to the Airport under the existing Lease and Use Agreement.

Ms. Artz reports that due to reduced flight schedules, US Airways determined that the 25,872 square feet of exclusive use space currently occupied under the existing Lease and Use Agreement exceeded the exclusive use space required to support US Airways' current flight activities. According to Ms. Artz, under Chapter 11, US Airways has the option to assume or reject the existing Lease and Use Agreement between US Airways and the Airport. Ms. Artz states that as part of the re-organization plan, US Airways wishes to assume the existing Lease and Use Agreement with the Airport, provided that the existing Lease and Use Agreement is modified to reduce the square footage of exclusive use space in Terminal 1 by 11,595 square feet from 25,872 square feet to 14,277 square feet. Ms. Artz reports that although the Airport has the discretionary authority to accept or reject the proposed lease modifications to the Agreement under Modification No. 9, the Airport chose to accept the proposed space reduction to US Airways because, as Ms. Artz reports, had the Airport rejected the proposed changes, US Airways may have likely rejected the existing Lease and Use Agreement in its entirety, as would be their right under Section 365 of the Bankruptcy Code, subject to approval of the U.S. Bankruptcy Court, and ended tenancy at the Airport.

Therefore, on March 25, 2003, the Airport Commission approved Modification No. 9 of the subject Agreement (Airport Commission Resolution No. 03-0039), which would modify the Agreement as follows:

1) decrease <u>exclusive use</u> space leased by US Airways, in the Terminal 1, by approximately 11,595 square feet (or 44.8 percent from 25,872 square feet of exclusive use space to 14,277 square feet);
2) add a relocation provision, which would allow the Airport to require US Airways to relocate from Terminal 1 at the Airport, at the airline's own expense to another terminal at the Airport, at the Airport's request, and;
3) add miscellaneous City laws, which were adopted by the City following the execution of the 1981 Lease and Use Agreement (see Comment No. 4).

Comments: 1. Ms. Artz reports that Modification No. 9 of the subject Agreement decreases exclusive use space to the US Airways leasehold in the categories below as follows:

Current Space	Modified Space	Proposed Amount of Space Reduction	Description
14,318	7,515	6,803	Category I. Ticket counter and holdrooms
6,276	6,276	-	Category II. Ticket counter back offices, VIP clubs and lounges, baggage claim lobbies, baggage service offices, curbside check-in, and administrative and operations offices located on the mezzanine and concourse upper level
5,076	284	4,792	Category III. Administrative and operations offices
202	202	-	Category IV. Inbound/outbound baggage handing areas, baggage transfer areas, and equipment rooms
-	-	-	Category V. Unenclosed and covered areas at ramp level
25,872	14,277	11,595	

2. The decrease of approximately 11,595 square feet of exclusive use space in Terminal 1 for US Airways would result in a reduction of $1,580,504 in annual rental revenues to the Airport, or approximately a 30.3% decrease in such annual rental payments made by US Airways to the Airport from $5,224,712 to $3,644,208, as shown in Attachment I provided by Ms. Artz. Ms. Artz states that the current rental rates, in effect as of July 1, 2002, are based on the Airport's Rates and Charges for Airlines for Fiscal Year 2002-2003, which are adjusted each July 1, by the Airport using the rates and charge methodology prescribed in the Lease and Use Agreements, and contained in Attachment II, provided by Ms. Artz. Pursuant to Section 2.109 of the City Charter, the Airport's Rates and Charges are not required to be approved by the Board of Supervisors.

3. As explained in the Attachment I memorandum, provided by Ms. Artz, the amount of the security deposit, required by the Airport for all of US Airways' existing leases and/or permits is $1,773,320, which US Airways has met through a performance bond issued by Travelers Casualty and Surety Company of America. Ms. Artz explains in Attachment I that the Airport has thus far made two partial draws on the performance bond to cure pre-bankruptcy delinquent invoices in the amounts of 1) $766,497.58 on October 8, 2002 and 2) $107,892.51 on April 17, 2003, for a total of $874,390.09, leaving a performance bond balance of $898,929.91. Ms. Artz reports in Attachment I that, "If Modification 9 is approved by the Board of Supervisors, thereby reducing terminal space and rent, the security deposit requirement will be reduced to $1,660,025 (based on FY 02/03 Rates and Charges). As a condition of effectiveness of Modification 9, US Airways will be required to restore its security deposit to the specified level."

4. According to Ms. Adrienne Go of the City Attorney's Office, the proposed Modification No. 9 would update the existing Lease and Use Agreement between the Airport and US Airways by incorporating all City laws applicable to the 1981 Agreement that were adopted by the Board of Supervisors since the 1981 Agreement was approved by the Board of Supervisors. According to Ms. Go, the Equal Benefits Ordinance is not applicable because the Equal Benefits Ordinance is not triggered by a lease modification that reduces leased space.

5. As noted above, the proposed Modification No. 9 would include a relocation provision, which would allow the Airport to relocate US Airways at the airline's own expense to another Airport terminal for any reason, at the Airport's request. Ms. Artz states if the Airport decides to demolish the Boarding Area "A" Rotunda located in Terminal 1, as contemplated in the Master Plan, US Airways will be required to relocate to another Airport terminal.

6. Attachment I provided by Ms. Artz contains additional information pertaining to Modification No. 9.

7. According to Ms. Artz, the Airport would re-lease the 11,595 square feet of exclusive use space to another airline if presented with the opportunity. However, Ms. Artz states that it is unlikely that the Airport would be able to lease the space in the near term.

8. As stated in Attachment I, "The documents surrounding the Reorganization Plan contemplated that the Airline assumed the Lease under the assumption that it would be modified. If the Board of Supervisors were to deny approval of the Modification, it is presumed that the Airline will go back to the Bankruptcy Court to ask for permission to reject the Lease in its entirety." According to Ms. Artz, the proposed Modification No. 9, including US Airway's assumption that they would be able to reduce its leased space and rent under this proposed modification, has been confirmed by the U.S. Bankruptcy Court as part of the reorganization plan. Ms. Artz states that subject to approval from the U.S. Bankruptcy Court, U.S. Airways has the authority to reject its entire existing Lease and Use Agreement with the Airport. However, the Budget Analyst notes that the Airport has not provided documentation to the Board of Supervisors that US Airways would terminate its Lease and Use Agreement with the Airport in its entirety if this proposed modification is not approved.

Recommendation: Approval of the proposed resolution is a policy matter for the Board of Supervisors.

AIRPORT COMMISSION
SAN FRANCISCO INTERNATIONAL AIRPORT
CITY AND COUNTY OF SAN FRANCISCO

MEMORANDUM

TO: Harvey Rose, Budget Analyst Office **DATE:** April 25, 2003

FROM: Diane Artz, Sr. Property Manager, SFO

SUBJECT: Approval of Modification No. 9 of Lease and Agreement L82-0120

This responds to the questions posed by Leanne Nhan on April 24, 2003, for information relating to the proposed Modification to the Lease and Use Agreement between the Airport and US Airways.

1. Provide the basis of the $1.6 million to $3.6 million reduction in rent estimate. If possible, please provide a comparison chart similar to the example below for the subject modification.

   The reduction in rent under Lease L82-0120 is approximately $1.58M, resulting in a modified annual rent of approximately $3.6M.

Terminal 1								
Revenue Type	Category	Annual Rent per Sq. Ft. by Category	Current Sq. Ft.	Current Annual Rent	Proposed Sq. Ft. Decrease	Annual Rent Decrease	Total Proposed Sq. Ft.	Anticipated Annual Rent
Exclusive Use Space	I	$171.81	14,318	$2,459,976	6,803	$1,168,823	7,515	$1,291,152
	II	$ 128.86	6,276	$808,725	-	$0	6,276	$808,725
	III	$85.91	5,076	$436,079	4,792	$411,681	284	$24,398
	IV	$42.95	202	$8,676	-	$0	202	$ $8,676
	V	$17.18	-	$0	-	$0	-	$0
Subtotal			25,872	$3,713,456	11,595	$1,580,504	14,277	$2,132,952
Joint Use Space	II	$128.86	14,489	$1,116,588	-	$0	14,489	$1,116,588
	IV	$85.91	19,689	$394,668	-	$0	19,689	$394,668
Subtotal			34,178	$1,511,256	-	-	34,178	$1,511,256
Total				$5,224,712	11,595	$1,580,504		$3,644,208

Joint Use Formula
total square footage x Cat Rate
20% is paid equally by participating carriers
80% is paid on prorata share based on enplaned or deplaned passengers

2. Describe in detail the equipment transfer of: 1) two passenger loading bridges, two VA power units serving the Gates, and 3) the compliment of customer seating furniture in the hold rooms.

US Airways has certain personal property in Boarding Area A Rotunda, including customer seating in the hold rooms and passenger loading bridges for boarding of its passengers onto the aircraft. The passenger loading bridges are affixed to the facility. The two KVA power units are mobile and provide power to the aircraft at the gate. The transfer of ownership of the equipment will be accomplished through a bill of sale. US Airways will transfer title without monetary compensation. The Airport estimates the total value of the equipment to be transferred is $400,000.

Describe what it means that "City will grant Airline the non-exclusive use of the aircraft position at Gate 14 for remain-over-night (RON) operations of Airline's aircraft for a period of two years after Effective Date."

In the normal course of business, airlines turn aircraft at their gates according to a schedule of flight activity. If the airline has more aircraft of the ground than they have gates at which to rest them, they have to move the aircraft to an Airport controlled (i.e., not in leasehold) aircraft position. The Airport charges for this usage in accordance with Airport Rates and Charges, approved each fiscal year by the Airport Commission. Currently, due to the weak market conditions, the Airport controlled aircraft positions are experiencing low usage, therefore, the Airport is not losing revenue from other airlines by allowing US Airways to utilize the aircraft position at Gate 14.

3. What would occur if Modification No. 9 was not approved by the Board of Supervisors?

   The documents surrounding the Reorganization Plan contemplated that the Airline assumed the Lease under the assumption that it would be modified. If the Board of Supervisors were to deny approval of the Modification, it is presumed that the Airline will go back to the Bankruptcy Court to ask for permission to reject the Lease in its entirety.

4. Explain the Security Deposit Requirement and US Airways' Deposit Status. The Airport requires each of its tenants to submit a security deposit to ensure performance of the terms and conditions of all existing leases and/or permits. The bond may be in the form a performance bond, a letter of credit, or other forms acceptable to the Airport. In US Airways' case, it chose to satisfy the security deposit requirement through a performance bond, issued by Travelers Casualty and Surety Company of America. Generally, a surety company guarantees the performance of another party.

The value of the bond is based on the requirements of the specific leases and permits in place. US Airways was required to, and has on file, a bond in the amount of $1,773,320. In order to receive payment on pre-petition invoices, on October 8, 2002, the Airport made a partial draw on the bond in the amount of $766,497.58, payment for which was received on December 18, 2002. On April 17, 2003, the Airport made a second draw on

the bond in the amount of $107,892.51[1]. We expect payment by close of business May 2, 2003. Once received, the remaining value of the bond will be $898,929.91.

If Modification 9 is approved by the Board of Supervisors, thereby reducing terminal space and rent, the security deposit requirement will be reduced to $1,660,025 (based on FY 02/03 Rates and Charges). As a condition of effectiveness of Modification 9, US Airways will be required to restore its security deposit to the specified level.

cc: Gary Franzella
Leanne Nhan

[1] As of March 17, 2003, the date of the final draft of Modification #9, US Airways had an outstanding pre-petition amount of $101,408.68. The pre-petition amount has since been revised to $107,892.51.

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 02-0111

ADOPTION OF FISCAL YEAR 2002/03 RATES & CHARGES

WHEREAS, the San Francisco International Airport ("Airport") and airlines have entered into a Lease and Use Agreement that provides a formula for the calculation of landing fee rates and terminal space rental rates; and

WHEREAS, the Lease and Use Agreement requires that landing fee and terminal rental rates be established for Fiscal Year 2002/03; and

WHEREAS, Airport staff has used the formula set forth in the Lease and Use Agreement to calculate the landing fee and terminal rental rates for Fiscal Year 2002/03; and

WHEREAS, the proposed rates are consistent with the terms and conditions of the Airport's bond covenants; and

WHEREAS, Airport staff followed the procedures outlined in the Lease and Use Agreement for airline review of the calculations; now, therefore, be it

RESOLVED, that the following Schedule of Rates and Charges at the Airport, submitted by the Airport Director to this Commission, is hereby approved and adopted; and be it further

RESOLVED, that the rates for each revenue landing by carriers with an operating agreement for landing at the Airport in Fiscal Year 2002/03 will be as follows:

Aircraft Type	Maximum Approved Landing Weight (lbs)	Fee	
Fixed Wing	25,734 or greater	$3.986	Per 1,000 lbs
Fixed Wing	Less than 25,734	$109.00	Per landing
Rotary Wing	12,867 or greater	$3.986	Per 1,000 lbs.
Rotary Wing	Less than 12,867	$55.00	Per landing

The rate of $3.986 per 1,000 pounds of approved maximum landing weight is composed of: (1) a surcharge of $2.217 per 1,000 pounds, representing one-half (50%) of the combined net cost from the Terminal and Groundside Areas: and (2) a base rate of $1.769 per 1,000 pounds, sufficient to meet all other anticipated operating costs and debt service coverage requirements of the Master Bond Resolution; and be it further

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 02-0111

RESOLVED, that the rates for each landing by general aviation aircraft and for each revenue landing by carriers without an operating agreement for landing at the Airport in Fiscal Year 2002/03 will be as follows:

Aircraft Type	Maximum Approved Landing Weight (lbs)	Fee
Fixed Wing	24,035 or greater	$4.258 per 1,000 lbs.
Fixed Wing	Less than 24,035	$109.00 per landing
Rotary Wing	12,017 or greater	$4.258 per 1,000 lbs.
Rotary Wing	Less than 12,017	$55.00 per landing

The rate of $4.258 per 1,000 pounds maximum landing weight is composed of: (1) a base rate of $3.986 per 1,000 pounds; and (2) a surcharge of $0.272 per 1,000 pounds; and be it further

RESOLVED, that this Commission hereby establishes rates for terminal space rentals composed of a base rental rate for terminal space leased from the Airport and a surcharge for one-half (50%) of the combined net cost from the Terminal and Groundside Areas as described in the Lease and Use Agreement. The resulting rates for each category of space will be as follows:

Rate Structure	Relative Value	Rate Per Square Foot
Category I	1.00	$171.81
Category II	0.75	128.86
Category III	0.50	85.91
Category IV	0.25	42.95
Category V	0.10	17.18

The base rate for Fiscal Year 2002/03 will average $59.82 per square foot, and the surcharge will be $39.46 per square foot; and be it further

RESOLVED, that the rental rate per square foot for Cargo Buildings 5, 6, and 7 will be as follows:

Area	
Building -Auto Package	$13.00
Building-Truck Dock Access-Auto Package	$15.00
Building-Auto Package-Truck Dock Access-Aircraft Parking Access	$17.00

and be it further

Item 16 - File 03-0540

Department: Airport

Item: Resolution approving a new lease between Brookstone Company, Inc. and the City and County of San Francisco, acting by and through its Airport Commission, for Brookstone Company, Inc. to operate a specialty retail store in Boarding Area "F" of Terminal 3, formerly called the North Terminal, of the Airport.

Location: Boarding Area "F" in Terminal 3 of the Airport

Purpose of Lease: The proposed new lease would provide approximately 2,380 square feet of space in Boarding Area "F" in Terminal 3 for the Brookstone Company to operate a specialty retail store, offering an assortment of consumer products and gadgets that are functional in purpose.

Lessor: City and County of San Francisco acting by and through its Airport Commission.

Lessee: Brookstone Company, Inc.

No. of Sq. Ft.: Approximately 2,380 square feet of space.

Annual Rent Payable by Brookstone Company, Inc. to The Airport: The proposed lease would require Brookstone Company, Inc. to pay to the Airport the greater of either the Minimum Annual Guarantee of $150,000 for each year of the five year lease term, adjusted by the percentage increase in the Consumer Price Index, or a percentage of the lessee's gross revenues as follows:

(a) 12 percent of gross revenues up to and including $1,500,000; plus
(b) 14 percent of gross revenues from $1,500,000.01 up to and including $2,000,000; plus
(c) 16 percent of gross revenues over $2,000,000.

Term of Lease: The term of the lease is five years plus up to 90 days for the construction period.

Right of Renewal: One two- year option to extend the term, to be exercised at the Airport's discretion.

Utilities and Janitor Provided by Lessor: The Lessee pays for the costs of all utilities and janitorial services.

Tenant Improvements: Brookstone Company, Inc. would be required to refurbish, redecorate, and modernize the interior and exterior of the premises with the specialty retail theme of functional gadgets. Brookstone Company, Inc. would be required to spend a minimum of $250 per square foot, or a total minimum cost of $595,000 for tenant improvement work. Design of the premises is subject to the review and approval of the Airport Design Review Committee.

Description: The proposed resolution would authorize a new five-year lease of 2,380 square feet to Brookstone Company, Inc. to operate a specialty retail store in Boarding Area "F" in Terminal 3 of the Airport. According to Ms. Teresa Rivor, the space was previously leased by the United Airlines Red Carpet Room, a lounge for United Airline's members. United Airlines recently moved into newly developed space, and the subject space then became available, according to Ms. Rivor.

On February 18, 2003, the Airport Commission adopted a resolution awarding the Terminal 3 Specialty Retail Store Lease to Brookstone Company, Inc. (Resolution No. 03-0026) after a competitive bidding process (see Comment 1). Operation of the specialty retail store will not begin until the proposed lease is approved by the Board of Supervisors.

Comments: 1. According to Ms. Rivor, the Airport advertised this proposed lease space with the California Newspaper Service Bureau, Asian Week, Philippine News, and the Airport Retail News in the months of May and June of 2002. Ms. Rivor advises that only two companies, Brookstone Company, Inc., a company that sells an assortment of consumer products and gadgets that are functional in purpose, and HMSHost, a company that operates retail stores in airports worldwide, attended the Airport's pre-bid conference on June 26, 2002. According

to Ms. Rivor, Brookstone Company, Inc. submitted the only Minimum Annual Guarantee bid by the deadline date of January 8, 2003. HMSHost did not submit a bid for the subject space. The Airport required that the Minimum Annual Guarantee be no less than $150,000. The percentages of gross revenues payable by the lessee were set by the Airport and were not a part of the competitive bidding.

2. According to Ms. Rivor, the Airport anticipates an estimated $1,000,000 in projected gross revenues to be realized by Brookstone Company, Inc. for the first year of operations. Therefore, the rent, payable to the Airport, will be the $150,000 Minimum Annual Guarantee for the first year since it exceeds the $120,000 estimated rent based on the percentage of gross revenues (12 percent of $1,000,000).

3. According to Ms. Rivor, given the current economic conditions in the City and based on industry feedback, and compounded by high costs of doing business at the Airport, the subject Minimum Annual Guarantee represents a fair market rate.

Recommendation: Approve the proposed resolution.

Item 17 – File 03-0505

Department: Department of Administrative Services, Office of Contract Administration, Purchasing Division

Item: Resolution designating, Asian Week, as recommended by the Purchasing Division, to be the City's outreach advertising newspaper for the Chinese community for Fiscal Year 2003-2004.

Description: Proposition J, which was approved by San Francisco voters in November of 1994, provided, in part, for an Outreach Advertising Fund to be established for the purpose of the City placing "outreach advertising" or weekly notices of items pertaining to governmental operations in periodicals selected to reflect the diversity in race and sexual orientation of the population of the City. Outreach advertisements include, but are not limited to, information about issues that are being reviewed by the Board of Supervisors and that directly affect the public. Pursuant to Proposition J and in accordance with Section 2.81-2(a) of the Administrative Code, the City is required to withhold 10 percent of the annual amounts paid for the City's Type 1 and Type 2 official advertising and to deposit these monies into the Outreach Advertising Fund.

The City's official advertising is divided into two categories:

Type 1 – Advertisements for Two or More Consecutive Days: Official advertising which must be published on two or more consecutive days, and all official advertising which is required to be published in accordance with 2.103 or 2.108 of the Charter for special meetings of the Board of Supervisors and its standing or special committees. The official newspaper must publish at least 5 consecutive days a week for Type 1 official advertising.

Type 2 – Advertisements for Single or Non-consecutive Days: Official advertising, which must be published one time (other than one-time advertising related to special meetings for the Board of Supervisors and its standing and/or special committees) or more than one time but not more than three times per week for a specified number of weeks. The official newspaper must be printed in the City

at least 3 days in a calendar week for Type 2 official advertising. Such days do not need to be consecutive days.

Comments:

1. Based on information provided by the Clerk of the Board, Mr. Mike Ward of the Purchasing Division estimates that the costs to City for FY 2003-2004 for Type 1 and Type 2 official advertising will be $101,881 and $139,982 respectively. Therefore, the FY 2003-2004 Type 1 and Type 2 official advertising are estimated to cost the City a total of $241,863 (see Comment No. 8).

2. The estimated amount for the Outreach Advertising Fund in FY 2003-2004, based on 10 percent of the total of $241,863 for Type 1 and Type 2 official advertising, is $24,186. As shown in Attachment I to this report, Mr. Ward estimates that, including carryover funds from FY 2002-2003, $80,971 will be available for outreach advertising in FY 2003-2004. Mr. Ward notes that the actual amount available for outreach advertising will depend on the volume of actual official adverting that will be placed in FY 2003-2004.

3. Since the passage of Proposition J, approved by the voters in November of 1994, bid prices are only one of several factors evaluated and considered in designating which newspapers should be the City's outreach advertising newspapers. Proposition J requires the Purchasing Division to recommend to the Board of Supervisors the newspapers with the highest total point scores for each community targeted for outreach advertising. According to Mr. Ward, the Asian Week received the highest score of the four bids from newspapers seeking to provide outreach advertising to the Chinese community. Attachment II, provided by Mr. Ward, contains bid data and point calculation information showing that Asian Week received the highest score.

4. According to the Mr. Ward, the Asian Week fully complies with all City contracting requirements and qualifies to be designated as one of the City's outreach advertising newspapers.

5. According to Mr. Ted Lakey of the City Attorney's Office, the Board of Supervisors is authorized to and has previously designated newspapers to provide outreach

advertising even though such newspapers do not comply with all contracting requirements under the City's Charter and the Administrative Code.

6. Attachment III, provided by Mr. Ward contains a list of all of the newspapers, which were designated as the City outreach advertising newspapers for FY 2002-2003. Attachment III also explains the status of all of the prospective outreach advertising newspaper for FY 2003-2004, in addition to the approval of this subject request to designate Asian Week as the City's outreach advertising newspaper for the Chinese Community.

7. As noted in Attachment IV, provided by Mr. Ward, the Purchasing Division has not recommended designating newspapers for outreach advertising in the Latino, African-American and the Lesbian/Gay/Bi-sexual/Transgender communities because the Purchasing Division considered the bids submitted from the newspapers in those communities to be non-responsive for the reasons explained in Attachment III.

8. Ms. Adele Destro of the Clerk's Office, states that in FY 2002-2003 the Board of Supervisors appropriated $480,000 for Type I and Type II official advertising but the projected expenditures for FY 2002-2003 are $245,000 or $235,000 less than the previously appropriated amount of $480,000. According to Ms. Destro, for FY 2003-2004, the Clerk of the Board has recommended a total of $241,863 for Type 1 and for Type 2 official advertising which is $238,137 less than the FY 2002-2003 appropriation of $480,000 and $3,137 less than the total projected FY 2002-2003 expenditures of $245,000.

Recommendation: Approval of the proposed resolution is a policy matter for the Board of Supervisors.

Attachment I

Exhibit D

Outreach Advertising Fund
Estimated Amount Available in
FY 2003-2004

Outreach advertising fund balance, February 28, 2003		75,336
Budget 2002-2003 – Outreach Advertising	80,600	
Paid to thru February 28, 2003	52,511	
Balance to be paid in FY2003-2003		28.089
Sub-total		47,247
Estimated Contribution to Outreach Advertising Fund in remainder of FY2002-2003	9,538	
Estimated Contribution to Outreach Fund in FY2003-2004 (10% of BOS Budget for FY2003-2004 $241,863)	24,186	
Total estimated contribution		33,724
Estimated funds available for outreach advertising in FY2003-2004		80,971

Attachment II

Exhibit C

Bid Evaluation
Contract No. 95307
for Outreach Advertising Services

	HISPANIC			CHINESE				AFRICAN-AMERICAN	LGBT
	El Latino	El Mensajero	El Reportero	Asian Week	China Press	World Journal	Chinese Times	SF Bay View	Bay Area Reporter
EVALUATION FACTORS:									
Advertising Price	15.00	8.55	12.75	12.30	15.00	10.05	10.50	15.00	15.00
Circulation	0	10.00	0	10.00	1.70	4.40	0.60	10.00	10.00
Newspaper Cost to Public	5.00	5.00	5.00	5.00	0	0	0	5.00	5.00
Prop J Preference:									
Locally Owned/Operated	2.00	0	0	0	0	0	0	2.00	0
Minority Ownership	2.00	0	0	0	0	0	0	2.00	0
Woman Ownership	2.00	0	0	0	0	0	0	0	0
Publish in Foreign Language	5.00	5.00	5.00	0	5.00	5.00	5.00	0	0
Chapter 12.D.A Preference	3.10	0	0	0	0	0	0	3.40	0
TOTAL POINTS	34.10	28.55	22.75	27.30	21.70	19.45	16.10	37.40	30.00
Cost per ad FY2003-2004	215	321	215	170	140	209	200	180	259
Cost per ad FY2002-2003	215	215	215	170	140	no contract	200	180	215
BUDGET 2003-2004	9,503	16,705	11,180	8,840	7,280	10,868	10,400	9,360	13,483
BUDGET 2002-2003	11,180	11,180	11,180	8,840	7,280	No contract	10,400	9,360	11,180
Increase/Decrease	-1,677	5,525	0	0	0		0	0	2,303
Percent Increase/Decrease	-18%	49%							21%
	Non-responsive: late providing proof of circulation	Non-responsive: Not printed in S.F.	Non-responsive: late providing proof of circulation	Responsive	Non-responsive: late providing ad and newspaper sample	Non-responsive: not printed in S.F. late providing newspaper sample	Responsive	Non-responsive: not printed in S.F.	Non-responsive: not printed in S.F.

List of Newspapers Designated as Outreach Advertising Newspapers
In FY2002-2003

Hispanic:
- El Latino
- El Mensajero
- El Reportero

Chinese:
- Asian Week
- China Press
- Chinese Times

African-American:
- S.F. Bay View

LGBT:
- Bay Area Reporter

Status of All Prospective Outreach Advertising Newspapers
For FY2003-2004

Community Newspaper	Status	Reason
Hispanic:		
El Latino	Non-responsive	Late providing proof of circulation
El Mensajero	Non-responsive	Not printed in San Francisco
El Reportero	Non-responsive	Late providing proof of circulation
Chinese:		
Asian Week	Responsive	
China Press	Non-responsive	Late providing ad and newspaper sample
World Journal	Non-responsive	Not printed in San Francisco Late providing ad and newspaper sample
Chines Times	Responsive	
African American:		
S.F. Bay View	Non-responsive	Not printed in San Francisco
LGBT:		
Bay Area Reporter	Non-responsive	Not printed in San Francisco

Statement that the Purchasing Division has not recommended designating newspapers for outreach advertising in the Latino, African-American and LGBT communities:

> **"The Purchaser has no recommendation for the Hispanic, African-American and Lesbian/Gay/Bi-sexual/Transgender communities because no responsive bids were received from these communities."**, excerpt from Judith Blackwell's letter to Gloria L. Young, Clerk of the Board, dated March 21, 2003

Item 18 – File 03-0506

Department: Department of Administrative Services, Office of Contract Administration, Purchasing Division

Item: Resolution designating the San Francisco Independent, as recommended by the Purchasing Division, to be the City's official newspaper for Type 2 non-consecutive day official advertising, for Fiscal Year 2003-2004.

Description: Proposition J, which was approved by the San Francisco electorate in November of 1994, in part, changed the criteria by which the City selects a newspaper to publish the City's official advertising. The Purchasing Division advises that, under Proposition J, pursuant to Section 2.81 of the Administrative Code, several criteria are considered and used to evaluate bids, on the basis of a point system. Bidders are required to submit typeset samples and other documentation for evaluation purposes. The criteria used for evaluation of bids under Section 2.81 includes (1) the cost of advertising in each newspaper (the newspaper which bids the lowest price for advertising receives additional points), (2) the level of circulation of each newspaper (the newspaper with the largest circulation receives additional points), (3) the cost of the newspaper (any newspaper with a majority of circulation that is free of charge to the general public receives additional points), and (4) the ownership of the newspaper (newspapers which are owned by local, minority or women-owned firms receive additional points).

The City's official advertising is divided into two categories:

Type 1 – Advertisements for Two or More Consecutive Days: Official advertising which must be published on two or more consecutive days, and all official advertising which is required to be published in accordance with 2.103 or 2.108 of the Charter for special meetings of the Board of Supervisors and its standing or special committees. The official newspaper must publish at least 5 consecutive days a week for Type 1 official advertising.

Type 2 – Advertisements for Single or Non-consecutive Days: Official advertising, which must be published one time (other than one-time advertising related to special meetings for the Board of Supervisors and its standing and/or special committees) or more than one time but not more than three times per week for a specified number of weeks. The official newspaper must be printed in the City at least 3 days in a calendar week for Type 2 official advertising. Such days do not need to be consecutive days.

The proposed resolution designates the San Francisco Independent as the official newspaper for Type 2 official advertising for FY 2003-2004. The City is presently contracting in FY 2002-2003 with the San Francisco Independent for Type 2 official advertising. That contract expires on June 30, 2003.

Comments:

1. According to Mr. Mike Ward of the Purchasing Division, in response to its Invitation for Bids for FY 2003-2004, the San Francisco Independent and the San Francisco Business Times submitted bids for Type 2 advertising. Attachment I, provided by the Purchasing Division, contains bid data and point calculation information showing that the San Francisco Independent received the highest score of 26.25 points. Mr. Ward advises that the San Francisco Independent was the only responsive bidder.

2. Based on information provided by the Clerk of the Board, Mr. Ward estimates that the costs to City for FY 2003-2004 for Type 1 and Type 2 official advertising will be $101,881 and $139,982 respectively. Therefore, the FY 2003-2004 Type 1 and Type 2 official advertising are estimated to cost the City a total of $241,863 (see Comment No. 7).

3. As shown in Attachment I, the cost per line of typeset to be charged by the San Francisco Independent in FY 2003-2004 would be $3.98, which is the same as the $3.98 cost per line of typeset charged to the City by the San Francisco Independent in FY 2002-2003.

4. According to the Mr. Ward, the San Francisco Independent fully complies with all City contracting

requirements and qualifies to be the official newspaper for Type 2 official advertising through the bidding process.

5. Mr. Ted Lakey of the City Attorney's Office has advised that the Board of Supervisors need not accept the Purchasing Division's recommendations to award contracts to newspapers for official advertising and may designate any newspaper which is qualified under the Charter and the Administrative Code.

6. Regarding Type I official advertising, which is not the subject of this legislation, Mr. Ward advises that the San Francisco Examiner and the San Francisco Chronicle submitted bids for Type 1 official advertising for FY 2003-2004. However, Mr. Ward advises that the bids submitted by the Examiner and the Chronicle were not responsive for the reasons described in Attachment II to this report. According to Mr. Ward, should the Board of Supervisors choose to designate a newspaper(s) for Type I official advertising, such designation would be the subject of future legislation to be submitted by the Purchasing Division to the Board of Supervisors. According to Mr. Ward, the San Francisco Chronicle is providing the City with Type 1 official advertising in FY 2002-2003 under an extension of the FY 2001-2002 contract, which expires on June 30, 2003. Mr. Ward projects total FY 2002-2003 costs for Type 1 official advertising at $117,027.

7. Ms. Adele Destro of the Clerk's Office, states that in FY 2002-2003 the Board of Supervisors appropriated $480,000 for Type I and Type II official advertising but the projected expenditures for FY 2002-2003 are $245,000 or $235,000 less than the previously appropriated amount of $480,000. According to Ms. Destro, for FY 2003-2004, the Clerk of the Board has recommended a total of $241,863 for Type 1 and for Type 2 official advertising which is $238,137 less than the FY 2002-2003 appropriation of $480,000 and $3,137 less than the total projected FY 2002-2003 expenditures of $245,000.

Recommendation: Approval of the proposed resolution is a policy matter for the Board of Supervisors.

Bid Evaluation
Contract No. 95428
for Official Advertising
Type 2 - Nonconsecutive Day

Exhibit B

	S.F. Independent	S.F. Business Times
Evaluation Factors:		
Advertising Price	11.25	15.00
Circulation (home delivery)	10.00	0.30
Newsstand Price	5.00	0
Proposition J Preference:		
locally owned/operated	0	0
minority ownership	0	0
woman ownership	0	0
Chapter 12 Preference	0	0
Total Points	26.25	15.30
Bid Price Per Line FY2003-04	3.98	3.00
Contract Price FY2002-03	3.98	no contract
Estimated Cost FY2003-04	139,982	127,503
Estimated Cost FY2002-03	169,155	no contract
Weekly circulation (S.F. only)		
home deliveries	346,175 (Tuesday and Saturday only)	8,947 (Friday only)
total circulation	346,175	16,748
Bid Status	**Responsive** **Independent's circulation:** Tuesday: 199,450 Thursday: 500 Saturday: 146,725	**Non-responsive:** Printed 1 day per week only * Not 12B compliant Not printed in San Francisco No advertising sample No newspaper sample No distribution declaration form No copy of adjudication bid is incomplete

* Section 2.80-1 (a) of the Administrative Code requires that official newspapers be printed in the City three or more days in a calendar week.

An explanation of the two options for the Board to consider in designating the City's Type 1 official advertising newspaper, for FY2003-2004:

The Purchasing Division received two bids for Type 1 official advertising. One, from the San Francisco Examiner and the other from the San Francisco Chronicle. Both, of these bids are not responsive.

The Examiner's bid is not responsive for the following reasons:

a. Company is not compliant with Chapter 12B of the Administrative Code, pertaining to equal benefits
b. No home deliveries - the Examiner is for rack distribution only. According to a Circulation Statement submitted by the Examiner along with its bid, on Monday, February 14, 2003 the Examiner became a "free circulation" newspaper available through "rack distribution" only. Therefore, the bid is incomplete because not sufficient information was provided to the Purchasing Division to evaluate the bid. According to Sec. 2.81 (b) 3 of the Admin. Code, <u>newspaper circulation is calculated by adding the total number of newspapers copies delivered to homes</u> in the City and County of San Francisco for all days of a one-week period.
c. No audited circulation report provided along with the Examiner's bid, as required. To verify its circulation, the Examiner provided an Internal Audit, covering the period of July 1, 2002 – December 31, 2002.
d. Copy of adjudication provided along with the bid decreeing that the Examiner is a newspaper of general circulation is for the "old" Examiner and is dated October 18, 1951. Given the documentation provided and recent circulation changes, the Purchasing Division is unable to verify whether the Examiner is adjudicated as a newspaper of general circulation by the Superior Court.

The Chronicle's bid is not responsive for the following reasons:

a. Company is not compliant with Chapter 12B of the Administrative Code, pertaining to equal benefits.
b. No copy of adjudication provided along with bid, as required

The estimated cost of each of these two alternatives would be as follows:

Examiner	\$ 76,119
Chronicle	\$123,113

Given that both the Examiner and Chronicle bids are non-responsive, the Purchasing Division cannot make a recommendation to the Board because it does not have authority to waive City requirements.

Item 19 - File 03-0222

Note: This hearing was continued by the Finance and Audits Committee at its meeting of May 21, 2003.

Department: Assessor-Recorder

Item: Hearing to analyze backlog of work of the Assessor's Office; (2) financial impacts of said backlog; and (3) analyze and establish performance timelines and performance measures for that office.

Description: 1. Attachment I, provided by the Assessor-Recorder is a listing of performance measures developed for calendar years 2002 and 2003. The Attachment also provides performance goals for calendar years 2002 and 2003.

2. Attachment II, a memorandum from the Assessor-Recorder, provides an update on the status of the Assessor-Recorder's processing backlog.

Comments: 1. The performance measures and performance goals shown in Attachment I were developed by the Assessor-Recorder working with the Controller's Special Projects Office. The Budget Analyst had reviewed an earlier version of the performance measures and suggested additional information on real property data which were incorporated into Attachment I.

2. Previously, the Assessor-Recorder provided historical actual performance for calendar years 2000 and 2001 to the Budget Analyst. However, that data was found to be unreliable according to Mr. Rich Hillis of the Assessor-Recorder's Office. The Budget Analyst notes that actual performance data is not yet available for calendar year

2002, which will be available when the Assessor-Recorder closes the assessment roll on June 30, 2003, and the Assessor-Recorder is unable to provide actual year-to-date performance data for calendar year 2003.

3. In Attachment II, a memorandum from the Assessor-Recorder concerning the current processing backlog, the Assessor-Recorder reports the following concerning backlogs:

- Deed Backlog in Transaction Unit – The backlog in the Transaction Unit has been reduced from 13,000 transactions as of January 8, 2003 to 10,500 transactions as of April 15, 2003. The value of the remaining 10,500 transactions is estimated at approximately $500 million in assessed value.

- Deed Backlog in Real Property – The backlog in the Real Property Division has been reduced from 3,900 assessable change of ownership transactions as of January 8, 2003 to 2,300 as of April 15, 2003. The value of the remaining 2,300 transactions is estimated to be $1 billion in assessed value.

- Permit Backlog – The new construction permit backlog in the office has increased from 7,300 as of January 8, 2003 to 8,100 as of April 15, 2003. The four new appraiser trainees hired in April of 2003 will be focusing primarily on outstanding new construction permits. The value of these 8,100 transactions is estimated to be $2.5 billion.

4. After reviewing the Assessor-Recorder's proposed performance measures, the Budget Analyst concludes that implementation of adequate management monitoring of such performance measures will represent an improvement over past practices in the Assessor-Recorder's Office. However, as noted above, historical performance data has been found to be unreliable by the current Assessor-Recorder. Therefore, since future performance cannot be compared to past performance using the proposed measures shown in Attachment I, it will not be possible to ascertain the level of improved performance compared to prior years before calendar year 2002.

Harvey M. Rose

cc: Supervisor Peskin
Supervisor Sandoval
Supervisor McGoldrick
Clerk of the Board
Controller
Ben Rosenfield
Ted Lakey

ASSESSOR-RECORDER'S OFFICE
Summary of Performance Measures

(Bolded data indicates goals. Other figures are actuals)

MEASURE	2002	2003 (through 4/30/03)
REAL PROPERTY Data: Deeds Received Assessable Deeds Received Permits Received Assessable Permits Received	 38,219 not avail. 24,034 not avail.	 12,810 not avail. 7,864 not avail.
1. Percentage of change of ownership transactions valued by June 30.	**85.0%**	**85.0%**
2. Percentage of new construction reassessments completed by June 30	**75.0%**	**85.0%**
3. Average number of change of ownership appraisals completed per appraiser.	500	550
4. Average number of new construction appraisals completed per appraiser (with added value).	**150**	200
TRANSACTION UNIT:		
Percentage of change of ownership documents	95.0%	97.0%

Source: Assessor-Recorder's Office

processed by March 1.		
1. Sales of single family dwellings processed within 30-days of sale.	**75.0%**	**85.0%**
2. Average number of deeds processed daily.	**120.0**	**150.0**
PERSONAL PROPERTY Data: Business Prop Stmts Received	10,365	
1. Percentage of mandatory audits completed by June 30	**44%**	**51%**
RECORDER Data Documents Recorded	246,790	
1. Percentage of Title Co. and walk-in documents recorded within 24 hours of receipt	100%	**100%**
2. Percentage of mailed documents recorded within 7 businesses days of receipt.	Not avail.	25%
3. Percentage of documents processed and returned to customer within 30 business days.	Not avail.	**90%**

Source: Assessor-Recorder's Office

City and County of San Francisco
Office of the Assessor-Recorder

MABEL S. TENG
Assessor-Recorder

MEMORANDUM

April 30, 2003

TO: SUPERVISOR AARON PESKIN
SUPERVISOR GERARDO SANDOVAL
SUPERVISOR JAKE MCGOLDRICK
Board of Supervisors' Finance Committee

FROM: MABEL TENG
Assessor

RE: Assessor-Recorder's Office Performance Measures

Per your request at our hearing last month, attached are the proposed performance measures for the Assessor-Recorder's Office.

Staff from the Assessor's Office and the Controller's Office worked together to develop these measures. The process included reviewing existing performance measures and surveying similar counties in California. The proposed measures will be utilized by the office's management staff as a tool to gauge the performance of the office's various divisions. We are also developing detailed reports for each employee in the office, notably the appraisers and transaction unit staff, to set goals and measure productivity to ensure that we are timely processing new transaction and working to reduce the valuation backlogs.

With regard to the backlogs, you should note that these are not included as ongoing performance measures. The proposed measures are designed to determine ongoing office productivity and to keep current on transaction processing. However, the Assessor's Office is also focused on reducing existing backlogs. I am prepared to report on these backlogs separately to the Board of Supervisors, as you deem necessary. The following information will give you an indication of our progress in reducing the backlogs since January:

- Deed Backlog in Transaction Unit – The backlog in the Transaction Unit has been reduced from 13,000 transactions to 10,500 transactions. The value of the remaining transactions is estimated at approximately $500 million in assessed value.

- Deed Backlog in Real Property – The backlog in the Real Property division has been decreased to 2,300 assessable change of ownership transactions compared to 3,900 in

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 190
San Francisco, CA 94102-4698

Phone: (415) 554-5500
Fax: (415) 554-7151

January. The value of the remaining transactions is estimated to be $1 billion in assessed value.

- Permit Backlog – The new construction permit backlog in the office has increased from 7,300 in January to 8,100 as of April 15th. The four new appraiser trainees hired in April will be focusing primarily on outstanding new construction permits. The value of these transactions is estimated to be $2.5 billion.

Over the past four months the office has processed approximately 4,000 assessable transactions resulting in $1.3 billion in supplemental assessed values. This will generate an additional $14 million in property tax revenues to the City and public schools (approximately $7 million to the City's general fund). We have also been able to clear nearly 800 appeals cases. Although this is significant progress, the larger, more complex cases are still pending before the AAB. These 1,500 pending cases consist of property owners requesting reductions of over $10 billion in assessed value. These cases have the potential of reducing property tax revenues by $116 billion.

I look forward to working with you on these issues. Please call me if you have any questions.

City Hall, 1 Dr. Carlton B. Goodlett Place, Room 190
San Francisco, CA 94102-4698

Phone: (415) 554-5500
Fax: (415) 554-7151

BOARD of SUPERVISORS

Dr. Carlto
San

Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

NOTICE OF CANCELLED MEETING

FINANCE AND AUDITS COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

Meeting Agenda

NOTICE IS HEREBY GIVEN that the meeting of the Finance and Audits Committee scheduled for Wednesday, June 11, 2003 at 12:30 p.m., at 1 Dr. Carlton B. Goodlett Place, Room 263, City Hall, San Francisco, California, has been **cancelled**.

Gloria L. Young, Clerk of the Board

BOARD of SUPERVISORS

Dr. Carlton
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

Meeting Agenda

NOTICE OF PUBLIC HEARING

FINANCE AND AUDITS COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN to the general public that the Finance and Audits Committee will hold a public hearing on **June 18, 2003 at 1:30 p.m.,** in Room 263 at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, California to consider the following:

File: 021948 Ordinance repealing Section 162 of the San Francisco Police Code relating to advertising by fortunetellers; adding Sections 1300 to 1321 to the San Francisco Police Code requiring fortunetellers to obtain a permit, setting forth permit procedures, regulating business by prohibiting deceptive acts and requiring receipts, rate schedules, and identification cards, requiring permit number on advertisements, allowing license inspections, and setting forth the penalty for violations of these sections; and amending San Francisco Police Code Section 2.26 setting forth permit and filing fees.

This legislation authorizes a new fee of $295.00 annually which pays for permit and filing fees.

Data in support of the proposed fee is available in the above-mentioned file of the Clerk of the Board of Supervisors ten days prior to the hearing.

For more information regarding the above, telephone (415) 554-5184 or write to Clerk's Office, Board of Supervisors, Room 244, City Hall, San Francisco, CA 94102.

Persons who are unable to attend the hearing may submit written comments regarding this matter prior to the beginning of the hearing. These comments will become part of the official public record.

Gloria L. Young, Clerk of the Board

POSTED: 5/29/03

City and County of San Francisco
Meeting Minutes
Finance and Audits Committee

[All Committees]
Government Document Section
Main Library

Members: Aaron Peskin, Gerardo Sandoval and Jake McGoldrick

Clerk: Linda Laws

Wednesday, June 18, 2003 | **1:30 PM** | **City Hall, Room 263**

Rescheduled Meeting

Members Present: Aaron Peskin, Gerardo Sandoval, Matt Gonzalez.

Members Absent: Jake McGoldrick.

MEETING CONVENED

The meeting convened at 1:41 p.m. Board President Gonzalez served on the Finance and Audits Committee for today's meeting only.

CONSENT AGENDA

All matters listed hereunder constitute a Consent Agenda, are considered to be routine and will be acted upon by a single roll call vote of the Committee. There will be no separate discussion of these items unless a member of the Committee or the public so requests, in which event the matter shall be removed from the Consent Agenda and considered as a separate item.

030883 **[Acceptance of an Easement]**

Resolution authorizing the acceptance of an avigation easement by the City and County of San Francisco from Martin/Regis San Bruno Associates, L.P. for the development of the former United States Navy Site in the City of San Bruno, at no cost to the City and County of San Francisco. (Real Estate Department)

(Pubic Benefit Recipient.)

5/13/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

RECOMMENDED..

The foregoing items were acted upon by the following vote:

Ayes: 2 - Peskin, Sandoval
Absent: 2 - McGoldrick, Gonzalez

REGULAR AGENDA

030222 **[Performance measures and timeline for pending work in the Assessor's Office]**

Supervisor Dufty

Hearing to analyze backlog of work of the Assessor's Office; (2) financial impacts of said backlog; and (3) analyze and establish performance timelines and performance measures for that office.

2/11/03, RECEIVED AND ASSIGNED to Finance Committee. Sponsor requests this item be scheduled for consideration at the 2/19/03 Finance meeting.

2/13/03, TRANSFERRED to Finance and Audits Committee. New committee structure 2/17/03.

2/19/03, CONTINUED TO CALL OF THE CHAIR. Heard in Committee. Speakers: Supervisor Dufty; Mabel Teng, Assessor-Recorder; Edward Harrington, Controller; Harvey Rose, Budget Analyst; Theresa Contreau, Appraiser, Assessor-Recorder's Office, Local 21 representative; John Farrell, Assessor-Recorder's Office; Gus Kenup, Assessor-Recorder's Office; Janet Weinder, Management Assistant, Assessor-Recorder's Office; Tim Amber, Assessor-Recorder's Office; Alex Terrell, Appraiser, Assessor-Recorder's Office.

5/7/03, CONTINUED. Speakers: None.
Continued to 5/21/03.

5/21/03, CONTINUED. Speakers: None.
Continued to 6/4/03.

6/4/03, CONTINUED. Speakers: None.
Continued to 6/18/03.

Heard in Committee. Speakers: Mable Teng, Assessor-Recorder; Monique Zmuda, Controller's Office.

FILED by the following vote:

Ayes: 2 - Peskin, Sandoval
Absent: 2 - McGoldrick, Gonzalez

021948 **[Repealing Police Code Section 162 - Regulating Fortunetellers]**

Supervisor Peskin

Ordinance repealing Section 162 of the San Francisco Police Code relating to advertising by fortunetellers; adding Sections 1300 to 1321 to the San Francisco Police Code requiring fortunetellers to obtain a permit, setting forth permit procedures, regulating business by prohibiting deceptive acts and requiring receipts, rate schedules, and identification cards, requiring permit number on advertisements, allowing license inspections, and setting forth the penalty for violations of these sections; and amending San Francisco Police Code Section 2.26 setting forth permit and filing fees.

11/25/02, ASSIGNED UNDER 30 DAY RULE to Finance Committee, expires on 12/25/2002.

2/5/03, TRANSFERRED to Finance and Audits Committee. New committee structure 2/17/03.

5/31/03, 6/07/03 Fee ad publication dates

6/5/03, REFERRED TO DEPARTMENT. Transmitted to Planning Department for environmental review.

6/12/03, RESPONSE RECEIVED. Non-physical exemption from CEQA Sections 15060(c)(3) and 15378.

Supervisor Peskin submitted an Amendment of the Whole bearing same title.

AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE.

Heard in Committee. Speakers: Terence Hallinan, District Attorney; Laurel Pallock, District Attorney's Office; Captain Thomas O'Neill, Inspector Greg Ovanession, Inspector Tom Feledy, SFPD; Female Speaker; Female Speaker; Robert McCarthy, McCarthy and Schwartz; Margaret Baumgartner, Deputy City Attorney; Debra Stein, GCA Strategies; Tayler Bayer; Male Speaker; Christopher Hall; Frank D'Alfonsi; Daniel Frattin, GCA Strategies; John Kennedy, Deputy City Attorney.
6/18/03 Amendment of the Whole further amended in Committee.

AMENDED.

Ordinance repealing Section 162 of the San Francisco Police Code relating to advertising by fortunetellers; adding Sections 1300 to 1321 to the San Francisco Police Code requiring fortunetellers to obtain a permit, setting forth permit procedures, regulating business by prohibiting deceptive acts and requiring receipts, rate schedules, and identification cards, requiring permit number on advertisements, allowing license inspections, and setting forth the penalty for violations of these sections; and amending San Francisco Police Code Section 2.26 and 2.27 setting forth permit and license fees.

Continued to 7/9/03.

CONTINUED AS AMENDED by the following vote:

Ayes: 2 - Peskin, Sandoval
Absent: 2 - McGoldrick, Gonzalez

030870 **[Repealing Airport Commission authority to approve counsel assigned to the Airport]**

Supervisor Daly

Ordinance repealing Administrative Code Section 2A.172 to eliminate the Airport Commission's authority to approve counsel assigned to the Airport by the City Attorney.

5/13/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Heard in Committee. Speaker: John Kennedy, Deputy City Attorney.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, Sandoval
Absent: 2 - McGoldrick, Gonzalez

030919 **[Full Day Alternatives to Summer School]**

Supervisors Ammiano, Ma, Peskin, Gonzalez, Newsom, McGoldrick, Dufty

Resolution urging the Mayor to fund $388,300 for full-day alternatives to summer school for 2003 from the Children's Fund submitted to the Board of Supervisors for its consideration on June 1, 2003.

5/20/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Speakers: None.

FILED by the following vote:

Ayes: 2 - Peskin, Sandoval
Absent: 2 - McGoldrick, Gonzalez

030582 **[Sale of City Real Property]**

Supervisor Peskin

Ordinance amending Section 23.3 of the Administrative Code to provide that the sale of City real property shall be at a sales price of at least 100 percent of the Director of Property's appraised value of the real property, rather than the current 90 percent requirement, except for sales resulting from public auctions or competitive bidding.

4/8/03, RECEIVED AND ASSIGNED to Finance and Audits Committee

Heard in Committee. Speaker: Richard Robinson.

RECOMMENDED by the following vote:

Ayes: 2 - Peskin, Sandoval
Absent. 2 - McGoldrick, Gonzalez

030729 **[Use of Former Embarcadero Freeway Parcel on Broadway Street]**

Resolution adopting a City policy regarding the use of the former Embarcadero Freeway right-of-way parcel known as Broadway Parcel I, on Broadway between Sansome and Battery Streets, Assessor Block 165, Lot 21, and the application of proceeds generated from its sale or other transfer. (Mayor)

4/29/03, RECEIVED AND ASSIGNED to Land Use Committee.

6/6/03, TRANSFERRED to Finance and Audits Committee.

6/9/03, NO ACTION TAKEN. PENDING IN COMMITTEE..

Heard in Committee. Speakers: Harvey Rose, Budget Analyst; Lieutenant Albert Pardini, SFPD.

CONTINUED TO CALL OF THE CHAIR by the following vote:

Ayes: 2 - Peskin, Sandoval
Absent: 2 - McGoldrick, Gonzalez

031057 **[Treasure Island Development Authority Interim Budget]**

Mayor

Resolution approving an interim Budget of the Treasure Island Development Authority for fiscal year 2003-2004. (Mayor)

(Fiscal impact.)

6/10/03, RECEIVED AND ASSIGNED to Finance and Audits Committee.

Speakers: None.

FILED by the following vote:

Ayes: 2 - Peskin, Sandoval
Absent: 2 - McGoldrick, Gonzalez

ADJOURNMENT

The meeting adjourned at 5:18 p.m.

CITY AND COUNTY OF SAN F

BOARD OF SUPERVISORS

BUDGET ANALYST

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642
FAX (415) 252-0461

June 12, 2003

TO: Finance and Audits Committee

FROM: Budget Analyst

SUBJECT: June 18, 2003 Finance and Audits Committee Meeting

Item 2 - File 03-0222

Note: This hearing was continued by the Finance and Audits Committee at its meeting of June 4, 2003.

Department: Assessor-Recorder

Item: Hearing to analyze backlog of work of the Assessor's Office; (2) financial impacts of said backlog; and (3) analyze and establish performance timelines and performance measures for that office.

Description:

1. Attachment I, provided by the Assessor-Recorder is a listing of performance measures developed for calendar years 2002 and 2003. The Attachment also provides performance goals for calendar years 2002 and 2003.

2. Attachment II, a memorandum from the Assessor-Recorder, provides an update on the status of the Assessor-Recorder's processing backlog.

Comments:

1. The performance measures and performance goals shown in Attachment I were developed by the Assessor-Recorder working with the Controller's Special Projects Office. The Budget Analyst had reviewed an earlier version of the performance measures and suggested additional information on real property data which were incorporated into Attachment I.

2. Previously, the Assessor-Recorder provided historical actual performance for calendar years 2000 and 2001 to the Budget Analyst. However, that data was found to be unreliable according to Mr. Rich Hillis of the Assessor-Recorder's Office. The Budget Analyst notes that actual performance data is not yet available for calendar year 2002, which will be available when the Assessor-Recorder closes the assessment roll on June 30, 2003, and the Assessor-Recorder is unable to provide actual year-to-date performance data for calendar year 2003.

3. In Attachment II, a memorandum from the Assessor-Recorder concerning the current processing backlog, the Assessor-Recorder reports the following concerning backlogs:

- Deed Backlog in Transaction Unit – The backlog in the Transaction Unit has been reduced from 13,000 transactions as of January 8, 2003 to 10,500 transactions as of April 15, 2003. The value of the remaining 10,500 transactions is estimated at approximately $500 million in assessed value.

- Deed Backlog in Real Property – The backlog in the Real Property Division has been reduced from 3,900 assessable change of ownership transactions as of January 8, 2003 to 2,300 as of April 15, 2003. The value of the remaining 2,300 transactions is estimated to be $1 billion in assessed value.

- Permit Backlog – The new construction permit backlog in the office has increased from 7,300 as of January 8, 2003 to 8,100 as of April 15, 2003. The four new appraiser trainees hired in April of 2003 will be focusing primarily on outstanding new construction permits. The value of these 8,100 transactions is estimated to be $2.5 billion.

4. After reviewing the Assessor-Recorder's proposed performance measures, the Budget Analyst concludes that implementation of adequate management monitoring of such performance measures will represent an improvement over past practices in the Assessor-Recorder's Office. However, as noted above, historical performance data has been found to be unreliable by the

current Assessor-Recorder. Therefore, since future performance cannot be compared to past performance using the proposed measures shown in Attachment I, it will not be possible to ascertain the level of improved performance compared to prior years before calendar year 2002.

processed by March 1.		
1. Sales of single family dwellings processed within 30-days of sale.	75.0%	85.0%
2. Average number of deeds processed daily.	120.0	150.0
PERSONAL PROPERTY Data: Business Prop Stmts Received	10,365	
1. Percentage of mandatory audits completed by June 30	44%	51%
RECORDER Data Documents Recorded	246,790	
1. Percentage of Title Co. and walk-in documents recorded within 24 hours of receipt	100%	100%
2. Percentage of mailed documents recorded within 7 businesses days of receipt.	Not avail.	25%
3. Percentage of documents processed and returned to customer within 30 business days.	Not avail.	90%

Source: Assessor-Recorder's Office

City and County of San Francisco
Office of the Assessor-Recorder

MABEL S. TENG
Assessor-Recorder

MEMORANDUM

April 30, 2003

TO: SUPERVISOR AARON PESKIN
SUPERVISOR GERARDO SANDOVAL
SUPERVISOR JAKE MCGOLDRICK
Board of Supervisors' Finance Committee

FROM: MABEL TENG
Assessor

RE: Assessor-Recorder's Office Performance Measures

Per your request at our hearing last month, attached are the proposed performance measures for the Assessor-Recorder's Office.

Staff from the Assessor's Office and the Controller's Office worked together to develop these measures. The process included reviewing existing performance measures and surveying similar counties in California. The proposed measures will be utilized by the office's management staff as a tool to gauge the performance of the office's various divisions. We are also developing detailed reports for each employee in the office, notably the appraisers and transaction unit staff, to set goals and measure productivity to ensure that we are timely processing new transaction and working to reduce the valuation backlogs.

With regard to the backlogs, you should note that these are not included as ongoing performance measures. The proposed measures are designed to determine ongoing office productivity and to keep current on transaction processing. However, the Assessor's Office is also focused on reducing existing backlogs. I am prepared to report on these backlogs separately to the Board of Supervisors, as you deem necessary. The following information will give you an indication of our progress in reducing the backlogs since January:

- Deed Backlog in Transaction Unit – The backlog in the Transaction Unit has been reduced from 13,000 transactions to 10,500 transactions. The value of the remaining transactions is estimated at approximately $500 million in assessed value.

- Deed Backlog in Real Property – The backlog in the Real Property division has been decreased to 2,300 assessable change of ownership transactions compared to 3,900 in

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January. The value of the remaining transactions is estimated to be \$1 billion in assessed value.

- Permit Backlog – The new construction permit backlog in the office has increased from 7,300 in January to 8,100 as of April 15th. The four new appraiser trainees hired in April will be focusing primarily on outstanding new construction permits. The value of these transactions is estimated to be \$2.5 billion.

Over the past four months the office has processed approximately 4,000 assessable transactions resulting in \$1.3 billion in supplemental assessed values. This will generate an additional \$14 million in property tax revenues to the City and public schools (approximately \$7 million to the City's general fund). We have also been able to clear nearly 800 appeals cases. Although this is significant progress, the larger, more complex cases are still pending before the AAB. These 1,500 pending cases consist of property owners requesting reductions of over \$10 billion in assessed value. These cases have the potential of reducing property tax revenues by \$116 billion.

I look forward to working with you on these issues. Please call me if you have any questions.

Item 3 – File 02-1948

Departments: District Attorney's Office (DA)
Police Department (SFPD)
Treasurer/ Tax Collector

Item: Ordinance repealing Section 162 of the San Francisco Police Code relating to advertising by fortunetellers; adding Sections 1300 to 1321 to the San Francisco Police Code requiring fortunetellers to obtain a permit, setting forth permit procedures, regulating business by prohibiting deceptive acts and requiring receipts, rate schedules, and identification cards, requiring permit number on advertisements, allowing license inspections, and setting forth the penalty for violations of these Sections; and amending San Francisco Police Code Section 2.26 setting forth permit and filling fees.

Description: The proposed ordinance would repeal Section 162 of the San Francisco Police Code that provides prohibitions on certain types of advertising by fortunetellers[1], such as a promise to find or restore lost or stolen property. Currently, the City does not require that fortunetellers obtain a permit, and the City does not regulate fortunetelling beyond the advertising rules in Section 162 and standard business license requirements which are not specific to fortunetelling businesses.

The proposed ordinance would add Sections 1300 to 1321 to the San Francisco Police Code, which would do the following:

- Require any persons engaged in fortunetelling with the object of gain, benefit or advance to obtain a permit from the San Francisco Police Department (SFPD) for a one-

[1] For the purpose of the proposed ordinance, "fortunetelling" is defined as "telling of fortunes, forecasting of futures, reading the past, or furnishing of any information not otherwise obtainable by the ordinary process of knowledge, by means of any occult, psychic power, faculty, force, clairvoyance, cartomancy, psychometry, phrenology, spirits, tea leaves, tarot card, scrying, coins, sticks, dice, sand, coffee grounds, crystal gazing or other such reading, or through mediumship, seership, prophecy, augury, astrology, palmistry, necromancy, mindreading, telepathy or other craft, art, science, talisman, charm, potion, magnetism, magnetized article or substance, or by any such similar thing or act. It shall also include effecting spells, charms, or incantations, or placing curses or advising the taking or administering of what are commonly called love powders or potions."

time permit filing fee of $295 payable to the SFPD. Persons engaged in public entertainment in a public setting and persons conducting or participating in a religious ceremony would be exempted from this permit requirement.[2]

- Require an annual permit fee in the amount of $40 payable by the fortuneteller to the Tax Collector.
- Establish permit procedures such that applicants must complete an application provided by the SFPD, and submit a completed application to the SFPD, including fingerprints, two recent passport sized photographs, and $295 non-refundable one time permit fee. The proposed ordinance directs the Chief of Police to hold a public hearing 30 days after receipt of a completed application and to grant the permit request unless during a background check the Chief of Police finds: 1) the place of business does not meet the applicable City codes required for businesses, 2) the applicant has been convicted of a crime, 3) the applicant has previously had a permit revoked or suspended for violation of permitting conditions, or 4) the application is incomplete or has provided inaccurate information. Should the SFPD issue a permit, the SFPD would forward an identification card, developed by the SFPD, and application to the Treasurer's Office for delivery to the permittee upon payment of the business license fee by the permittee to the Treasurer. The proposed ordinance states that the permit is not valid unless the annual business registration certificate fee has been paid to the Tax Collector. Fortunetelling businesses are currently required to obtain an annual business registration certificate as are all businesses within the City. The certificate fee ranges from $25 to $500 depending on the amount of taxable payroll.

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[2] Fortunetellers that are conducting or participating in any religious ceremony as a minister are exempted from the permit requirement provided that (1) "the benefit, gain or advantage shall be regularly accounted for and paid solely to or for the benefit of the bona fide church or religious association except that the bona fide church or religious association may pay to its ministers a salary or compensation based upon a percentage only, pursuant to an agreement between the church and the ministers that is embodied in a resolution and transcribed in the minutes of such church or religious association," and 2) "the minister holds a certificate of ordination from such bona fide church or religious association."

- Regulate fortunetelling businesses by requiring that fortunetellers (1) give customers receipts for services[3], (2) display in a clearly visible location the identification nameplate containing a photograph, right thumbprint, name and permit number of the permitee provided by the SFPD department, (3) include the permit number on any advertisements, and that (4) fortunetellers provide clients with a rate sheet[4] that includes a statement that if the customer has complaints, they may phone the SFPD at 553-1115.
- Grant the SFPD authority to investigate fortunetelling businesses.
- Establish penalties and fines such that any person violating the proposed ordinance would be guilty of a misdemeanor or infraction, to be determined by the District Attorney. Fines for an infraction would range from $100 to $500 and fines for misdemeanors would range from $200 to imprisonment in the County Jail for a period of not more than six months.

Fortunetellers would have three months from the effective date of the subject ordinance to obtain a permit.

Comments:

1. According to Ms. Margaret Baumgartner of the City Attorney's Office, the purpose of the proposed legislation is to regulate fortunetellers so that the District Attorney's Office (DA) can investigate fraud and deceptive practice charges, and to ensure that consumers are provided with information regarding services, rates, and complaint procedures. According to Ms. Laurel Pallock of the District Attorney's Office, the DA has received escalating complaints from alleged victims of fortuneteller fraud over the past five years and that the proposed ordinance would allow the DA to better investigate and prosecute such claims.

2. Ms. Pallock estimates that approximately 130 fortuneteller businesses operate in San Francisco. Ms. Marla Taylor of the Controller's Office estimates that the proposed one-time permit filing fee of $295 would generate $38,350 in revenue to

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[3] The proposed ordinance requires that receipts include the name of the permitee who provided the services, the permitee's permit number, the services rendered, the amount charged for each service provided, and the amount paid or expected, and if payment method is other than cash.

[4] The proposed ordinance specifies that rate sheets are to be posted in the case of a fixed location and a written copy of a rate sheet in the case of a roving or unfixed location.

the General Fund between FY 2002-2003 and FY 2003-2004. Ms. Taylor notes that thereafter, the revenues generated would depend on the number of new permit applications, which cannot be estimated at this time.

Sergeant Steven Zimmerman of the Police Department advises that the estimated costs to the Police Department, related to the issuance of the one-time permit filing fee, total $538. Ms. Marla Taylor of the Controller's Office has reviewed Sargent Zimmerman's cost assumptions and finds them reasonable. The Budget Analyst notes that the proposed one-time permit filing fee of $295 is $243 less than the total estimated costs of $538 to issue these one-time permits. Therefore, if the Board of Supervisors wishes to fully recover costs, the Budget Analyst recommends increasing the one-time permit filing fee by $243 from $295 to $538.

3. In addition to the one-time permit filing fee of $295, the proposed ordinance would require an annual permit fee of $40. Ms. Taylor estimates that this permit fee would generate approximately $5,200 annually. The Tax Collector's Office estimates that the costs of issuance, related to the annual permit fee, are $40. Therefore, the annual permit fee is estimated to fully recover costs.

Sargent Zimmerman advises that the Police Department would need to conduct ongoing tracking and investigations for the annual permit. Sargent Zimmerman believes that the costs per permit renewal of such tracking and investigations would be approximately $393 annually. However, as of the writing of this report, Sargent Zimmerman has not provided the Controller or the Budget Analyst with detailed data to support such cost estimates.

Recommendations: 1. In according with Comment No. 2, if the Board of Supervisors wishes to fully recover the costs related to the issuance of the one-time permit filing fees, amend the proposed ordinance to increase the one-time permit filing fee by $243 from $295 to $538.

2. Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

Item 7 - File 03-0729

Note: This item was transferred from the Land Use Committee to the Finance and Audits Committee at its meeting of June 9, 2003.

Department: Department of Public Works (DPW)

Item: Resolution adopting a City policy regarding the use of the former Embarcadero Freeway right-of-way parcel known as Broadway Parcel I, on Broadway between Sansome and Battery Streets, Assessor Block 165, Lot 21, and the application of proceeds generated from its sale or other transfer.

Description: Under Senate Bill 181, adopted by the California Legislature in 1991 and codified as Streets and Highways Code Section 72, the California Department of Transportation (CalTrans) conveyed parcels of land, which were formerly the right-of-way to the Embarcadero Freeway, to the City and County of San Francisco in exchange for the City agreeing to construct a system of streets and ramps to provide motorists with accessibility comparable to that provided by the former freeway. In January of 1999, the Board of Supervisors adopted a resolution (File 98-2098), which approved in principle the San Francisco Police Department's purchase or lease of Broadway Parcel I, which was formerly part of the right-of-way to the Embarcadero Freeway, for the construction of a police station to replace the current North Beach police station. That previously approved resolution stated that proceeds from the potential sale of Broadway Parcel I to the Police Department would be used to "provide the City with significant resources for the improvement of local street access comparable to that provided by the former Embarcadero Freeway". Broadway Parcel I has remained under the jurisdiction of the Department of Public Works (DPW) subject to the sale of the parcel to the Police Department.

Under the proposed resolution, the Board of Supervisors would continue to designate Broadway Parcel I, on Broadway between Sansome and Battery Streets, for the Police Department to acquire jurisdiction from DPW to construct a police station on or before June 30, 2005. After June 30, 2005, if the Police Department has not acquired Broadway Parcel I from DPW for the construction of the police station, DPW would be

authorized to sell Broadway Parcel I on the open market, subject to Board of Supervisors approval, or sell, lease, or otherwise transfer the parcel through a Request for Proposal (RFP) process, with prior Board of Supervisors approval.

Comments:

1. SB 181 required the City to construct a roadway to replace the Embarcadero Freeway. In exchange, Caltrans agreed to transfer the right-of-way parcels to the City under the condition that the City use the right-of-way parcels or proceeds from the right-of-way parcels to complete the roadway construction. In accordance with SB 181, the City constructed the Mid-Embarcadero Roadway, which is now complete. According to Ms. Tina Olson of DPW, the total cost of the Mid-Embarcadero Roadway construction was $75,571,883, of which $62,946,962 was paid by various grants. Ms. Olson states that DPW received $12,624,921 from the San Francisco Transportation Authority ($75,571,883 less $62,946,962) to purchase land for the Mid-Embarcadero Roadway and to pay a portion of the Mid-Embarcadero Roadway construction costs, of which DPW intended to repay $5,600,000. According to Ms. Olson, DPW has included $2,600,000 in the FY 2003-2004 budget to partially repay the $5,600,000 loan made by the San Francisco Transportation Authority, but still owes $3,000,000. Ms. Olson advises that DPW will receive $2,600,000 to partially repay the loan from (a) $1,000,000 in proceeds from the sale of San Francisco Redevelopment Agency land to the Gap, Inc.[1], (b) $1,100,000 in proceeds from the sale of the City's property, located on the west side of Spear Street, between Howard and Folsom Streets, to the San Francisco Redevelopment Agency, and previously approved by the Board of Supervisors (File 03-0730), and (c) $500,000 from the pending Ground Lease and companion Lease Disposition and Development Agreement between the Mayor's Office of Housing and the Chinatown Community Development Corporation for Assessor's Block 141, Lot 11, on Broadway between

[1] In March of 1997, the Board of Supervisors approved the sale of the 35,773 square foot parcel of land, formerly occupied by the Embarcadero Freeway between Steuart and Spear Streets, to the Gap for $4,000,000 (File 96-97-1). According to the Ms. Olson, the $4,000,000 sales proceeds were allocated to fund the Mid-Embarcadero Roadway Replacement Project, of which $1,000,000 would be used to repay the subject SFRA loan.

Battery and Front Streets for affordable housing development.[2]

2. Ms. Olson advises that the Division of Real Estate has estimated that the fair market value of the subject Broadway Parcel I is approximately $3,500,000, although the Division of Real Estate has not yet conducted a formal appraisal. Ms. Olson advises that DPW will pay off its loan balance of $3,000,000 owed to the San Francisco Transportation Authority from the proceeds of the sale of the subject parcel to be received from either the Police Department, or, if the Police Department does not purchase the subject parcel prior to June 30, 2005, from whomever purchases the parcel after June 30, 2005.

3. As noted in the attached memorandum, provided by the Police Department, the Police Department is actively planning the design and construction of the new proposed Central Police Station on Broadway Parcel I.

Recommendation: Approval of the proposed resolution is a policy matter for the Board of Supervisors.

Harvey M. Rose

cc: Supervisor Peskin
Supervisor Sandoval
Supervisor McGoldrick
Clerk of the Board
Controller
Ben Rosenfield
Ted Lakey

[2] According to Ms. Teresa Yanga of the Mayor's Office of Housing (MOH), MOH anticipates that the proposed Ground Lease/Lease Disposition and Development Agreement and the jurisdictional transfer of the subject property from DPW to MOH will be submitted for approval to the Board of Supervisors in July of 2003.

BOARD of SUPERVISORS

Dr. Carlton B.
San Fra
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

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NOTICE OF CANCELLED MEETING

FINANCE AND AUDITS COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN that the meeting of the Finance and Audits Committee scheduled for June 25, 2003 at 12:30 p.m., at 1 Dr. Carlton B. Goodlett Place, Room 263, City Hall, San Francisco, California, has been **cancelled**.

Gloria L. Young, Clerk of the Board

FINANCE AND AUDITS COMMITTEE
S.F. BOARD OF SUPERVISORS
CITY HALL, ROOM 244
1 DR. CARLTON GOODLETT PLACE
SAN FRANCISCO, CA 94102-4689

IMPORTANT HEARING NOTICE!!!